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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

कर्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कर्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 जुलाई, 2001

का.भा. 1785.—केंद्रीय सरकार, एनडिआन दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39418/एचडी दिनांक 17-7-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार, की सहमति से "राइट बैंक कानून की धारडी 43.563 कि. मी. से 48.680 कि. मी. की खुदाई सहित एनएच कॉसिंग रेलवे कॉसिंग तथा रंगाली इरिगेशन प्रोजेक्ट एआई बीपी के एचआर को छोड़कर अन्य निर्माण कार्यों सहित" की संविदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अवसरों तथा भारतीय वंड संहिता की

धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अवसरों और उपर्युक्त अवसरों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक पदच्युत, प्रयत्नों, दुष्प्रेरणों तथा उसी व्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किसी अन्य अवसर और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधि-कारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एचडी-II(i)]

हरि सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION

(Department of Personnel and Training)

New Delhi, the 20th July, 2001

S. O. 1785.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act,

1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt, accorded vide Notification No. 39418 HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Excavation of Right Bank Canal from RD 43.563 KM to 48.680 KM including structures other than NH crossing Railway crossing and HR of Rengali Irrigation Project AIBP".

[No. 228/24/2000-AVD. II (i)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का. आ. 1786.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39419/एचडी दिनांक 17-7-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "लेफ्ट बैंक कनाल की आरम्भी 44.50 कि.मी. से 47.50 कि.मी. के निर्माण सहित आरम्भी-एलबीसी-II-आईसीएफ पैकेज नं. 15 के एचआर और सीआर को छोड़कर अन्य निर्माण कार्यों सहित" की संविदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक षड्यंत्र, प्रयत्नों, दुष्प्रेरणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी-II(ii)]

हरि सिंह, अवसर सचिव

New Delhi, the 20th July, 2001

S.O. 1786.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the

Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt, accorded vide Notification No. 39419/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of left bank canal from RD 44.50 KM to 47.50 KM with all structures other than HR and CR or R. I. P-LBC-II OECF package No 15".

[No. 228/24/2000-AVD. II (ii)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का. आ. 1787.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39420/एचडी दिनांक 17-7-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "एलबीसी के आरम्भी 41.36 कि.मी. से 44.50 कि.मी. के निर्माण सहित रेंगाली इरिगेशन सब-प्रोजेक्ट-आईसीएफ पैकेज नं. 14 को छोड़कर अन्य निर्माण कार्यों सहित" की संविदा देने और कार्य निष्पादन के संबंध में, अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक षड्यंत्र, प्रयत्नों, दुष्प्रेरणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी-II(iii)]

हरि सिंह, अवसर सचिव

New Delhi, the 20th July, 2001

S. O. 1787.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act,

1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39420/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of LBC from RD 41.36 to 44.50 KM with all structures other than HIR and CR of Rengali Irrigation Sub-Project-OECF Package No. 14".

[No. 228/24/2000-AVD.II (iii)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.आ. 1788.— केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिमूचना सं. 39421/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "स्पील वे (स्टेज-1), मंजोर इरिगेशन प्रोजेक्ट के निर्माण" की संधिदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अन्वित किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक पञ्चक, प्रयत्नों, दुष्प्रेरणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी. II (iv)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S.O. 1788.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with

the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39421/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regards to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of spill way (Stage-1) of Manjore Irrigation Project".

[No. 228/24/2000-AVD. II (iv)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.आ. 1789.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिमूचना सं. 39422/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "एलबीसी के आरबी 50.5 कि.मी. से 55.50 कि.मी. के निर्माण सहित रेंगाली इरिगेशन सब-प्रोजेक्ट-एलबीसी-II ओई-सीएफ पैकेज नं. 1 को छोड़कर अन्य निर्माण कार्यों" की संधिदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अन्वित किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक पञ्चक, प्रयत्नों, दुष्प्रेरणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी. II (v)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1789.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act

XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39422/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different section of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of LBC from RD 50.5 KM to 55.50 KM with all structures other than HR and CR of Rengali Irrigation Sub-Project-LBC-II-OECF Package No. 1"

[No. 228/24/2000-AVD. II (v)]
HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.आ. 1790.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39423/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "मुख्य इंजीनियर, डिजायन, उड़ीसा के अनुमोदन के बिना सीई और बीएम, रेंगली राइट बेसिन द्वारा नियुक्त परामर्शी एंजिनियरों के साथ निष्पादित अनेक करारों के जरिए भारबीसी (भारग्राईपी) के नेटवर्क के वितरण के लिए मेकरो प्लानिंग सर्वे की खुदाई और संस्ट्रक्शन ड्राइंग तैयार करने" की सविदा देने और कार्य निष्पादन के संबंध में भ्रष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त अपराध-धिक षडयंत्र, प्रयत्नों, बुझेरणों तथा उसी संभवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एचडी. II (vi)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1790.—In exercise of the powers conferred by Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39423/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Excavation of Macro Planning Survey and preparation of construction drawings for of the distribution net work of RBC (RIP) through several agreements executed piecemeal with consulting agencies engaged by the CE and BM, Rengali Rights Basin and without approval of Chief Engineers, Designs, Orissa."

[No. 228/24/2000-AVD. II (vi)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.आ. 1791.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39424/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "एनएबीएआरडी प्रसि-सर्टेट्स के अधीन तवरंगपुर ब्लॉक में कुमुगी जोर एमग्राईपी सरप्लस चैनल में अर्ब डेम हेड रेगुलेटर, सरप्लस एसकेव और ग्लासिक फान के निर्माण" की सविदा देने और कार्य निष्पादन के संबंध में भ्रष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त अपराध-धिक षडयंत्र, प्रयत्नों, बुझेरणों तथा उसी संभवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य

अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी. II (vii)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1791.—In exercise of the powers conferred by Sub-Section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39424/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of Kusumi Jore MIP (Earth Dam head regulator, surplus escape and glassic fall in surplus channel in Nowrangpur Block under NABARD assistance".

[No. 228/24/2000-AVD. II (vii)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.धा. 1792.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार गृह विभाग की अधिसूचना सं. 39425/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "रिप्लेसिंग अंडर स्लुईसिज ऑफ बैटारानी वीयर सहित एच-एससी रेंज-III (सिविल वर्क) के हैड रेगुलेटर के रिनोवेशन" की संविदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक पड़यंत्र, प्रयत्नों, कूटप्रणियों तथा उड़ी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक

से संबंधित किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी. II (viii)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1792.—In exercise of the powers conferred by Sub-Section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39425/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Replacing under sluices of Baitarani Weir including renovation of head regulator of HLC Range-III (Civil Works) covered under WRCP Package No. 1A".

[No. 228/24/2000-AVD. II (viii)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.धा. 1793.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 394-26/एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "लेफ्ट बैंक से राइट में कनाल पर आरडी 11 कि.मी. से 22 कि.मी. तक सड़क रोड के निर्माण" की संविदा देने और कार्य निष्पादन के संबंध में अष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन दंडनीय अन्य अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक

पठयंत्र, प्रयत्नों, बुद्धिरेणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करती है।

[सं. 228/24/2000-एवीडी. II (ix)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1793.—In exercise of the powers conferred by Sub-Section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39426/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Construction of service Road on left bank to Right Main Canal from RD 11 Km to 22 Km".

[No. 228/24/2000-AVD. II (ix)]

HARI SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2001

का.आ. 1794.—केन्द्रीय सरकार एनद द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उड़ीसा राज्य सरकार, गृह विभाग की अधिसूचना सं. 39427/-एचडी दिनांक 17-07-2001 द्वारा प्राप्त उड़ीसा राज्य सरकार की सहमति से "पुरी इरिगेशन डिविजन के डक्यूअर-सीपी पैकेज नं. 7 के अधीन साखीगोपाल ब्रांच कनाल में आरबी 30 कि.मी. से महानदी डेल्टा स्टेज-II के डेल तक सुधार" की संविदा देने और कार्य निष्पादन के संबंध में भ्रष्टाचार निवारण अधिनियम, 1988 की विभिन्न धाराओं के अधीन किए गए अभिकथित अपराधों तथा भारतीय दंड संहिता की धाराओं और/अथवा किसी अन्य कानून/नों के अधीन संवैधानिक अन्य अपराधों और उपर्युक्त अपराधों में से

एक अथवा अधिक से संबंधित अथवा संसक्त आपराधिक पठयंत्र, प्रयत्नों, बुद्धिरेणों तथा उसी संव्यवहार के अनुक्रम में किए गए और उन्हीं तथ्यों से उद्भूत अथवा संबंधित अपराधों में किसी एक से संबंधित किन्हीं अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उड़ीसा राज्य पर करनी है।

[सं. 228/24/2000-एवीडी. II (x)]

हरि सिंह, अवर सचिव

New Delhi, the 20th July, 2001

S. O. 1794.—In exercise of the powers conferred by Sub-Section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946), the Central Government with the consent of the State Government of Orissa, Home Deptt., accorded vide Notification No. 39427/HD dated 17-7-2001 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Orissa for investigation of offences in regard to alleged commission of offences under different sections of Prevention of Corruption Act, 1988 and other offences punishable under sections of IPC and/or any other law/s and criminal conspiracy, attempts, abetments in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in course of the same transactions and arising out of the same facts or in connection with one of the offences committed in respect of award of contract and execution of work "Improvement to Sakhigopai Branch Canal from RD 30 Km to Tail of Mahanadi Delta Stage-II covered under WRCP Package No. 7 of Furi Irrigation Division".

[No. 228/24/2000-AVD. II (x)]

HARI SINGH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 25 जून, 2001

स्टाम्प

का.आ. 1795.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एनद द्वारा इंडिया सोवरस्रीज बैंक चेन्नाई को मात छिहत्तर लाख चौहत्तर हजार आठ सौ पचास रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा जारी किए जाने वाले मात छिहत्तर करोड़ चौहत्तर लाख पचचासी हजार रुपये के

समग्र मूल्य के प्रत्येक एक-एक हजार रुपये के 000001 से 767485 तक की विशिष्ट संख्या वाले आई ओ बी वी वी थार एस-2000 असुरक्षित विमोच्य बंधपत्रों—प्रथम श्रृंखला के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप के बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभाव है।

[सं. 25/2001-स्टाम्प/फा. सं. 33/36/2001-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 25th June, 2001

STAMPS

S.O. 1795.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Indian Overseas Bank, Chennai to pay consolidated stamp duty of rupees seventy six lakh seventy four thousand eight hundred fifty only chargeable on account of the stamp duty on bonds in the nature of Promissory Notes described as JOB VRS 2000 Unsecured Redeemable Bonds—Ist Series bearing distinctive numbers from 000001 to 767485 of rupees one thousand each aggregating to rupees seventy six crore seventy four lakh eighty five thousand only, to be issued by the said Bank.

[No. 25/2001-STAMPS/F. No. 33/36/2001-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 4 जुलाई, 2001

स्टाम्प

का.आ. 1796.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एन.ओ. स्टेट बैंक आफ हैदराबाद को मात्र छियास लाख पचास हजार रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा दिनांक 23-02-2001 को आवंटित मात्र एक सी पञ्चवीस करोड़ रुपये के समग्र मूल्य के 11.50% एस बी एच बंधपत्र दूसरी श्रृंखला के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप वाले बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभाव है।

[सं. 26/2001-स्टाम्प/फा. सं. 33/29/2001-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 4th July, 2001

STAMPS

S.O. 1796.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits State Bank of Hyderabad

to pay consolidated stamp duty of rupees ninety six lakh fifty thousand only chargeable on account of the stamp duty on bonds in the nature of Promissory Notes described as 11.50 per cent SBH BONDS—2nd Series aggregating to rupees one hundred twenty five crore only, allotted on 23-2-2001 by the said Bank.

[No. 26/2001-STAMPS/F. No. 33/29/2001-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 9 जुलाई, 2001

स्टाम्प

का.आ. 1797.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एन.ओ. स्टेट बैंक आफ हैदराबाद को मात्र छत्तीस लाख तिरासी हजार रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा आवंटित मात्र छत्तीस करोड़ तिरासी लाख रुपये के समग्र मूल्य के प्रत्येक एक-एक लाख रुपये के 0001 से 2683 तक की विशिष्ट संख्या वाले एस आई बी वी बंधपत्र—2000 के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप वाले बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभाव है।

[सं. 27/2001-स्टाम्प/फा. सं. 33/27/2001-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 9th July, 2001

STAMPS

S.O. 1797.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits The South Indian Bank Limited, New Delhi to pay consolidated stamp duty of rupees twenty six lakh eighty three thousand only on Bonds in the nature of Promissory Notes described as SIB BOND—2000 bearing distinctive numbers from 0001 to 2683 of rupees one lakh each aggregating to rupees twenty six crore eighty three lakh only, to be issued by the said Bank.

[No. 27/2001-STAMPS/F. No. 33/37/2001-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 9 जुलाई, 2001

स्टाम्प

का.आ. 1798.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एन.ओ. स्टेट बैंक आफ हैदराबाद को मात्र छत्तीस लाख बीस हजार रुपये का समेकित स्टाम्प शुल्क अदा करने

की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा जारी किए गए मात्र एक सौ चालीस करोड़ रुपये के समग्र मूल्य के प्रत्येक एक-एक लाख रुपये के यूबीआई प्रसुरक्षित विमोक्ष्य अपरिवर्तनीय बंधपत्र—1 श्रृंखला के रूप में वित्त प्रोमिसरी नोटों के स्वरूप वाले बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 28/2001-स्टाम्प/फा. सं. 33/34/2001-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 9th July, 2001

STAMPS

S.O. 1798.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits United Bank of India, Calcutta to pay consolidated stamp duty of rupees eighty lakh fifty four thousand only on Bonds in the nature of Promissory Notes described as UBI UNSECURED REDEEMABLE NON-CONVERTIBLE BONDS—SERIES-I of rupees one lakh each aggregating to rupees one hundred forty crore only to be issued by the said Bank.

[No. 28/2001-STAMPS/F. No. 33/34/2001-ST]

R. G. CHHABRA, Under Secy.

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 11 जुलाई, 2001

(आयकर)

का.आ. 1799.—सर्वाधारण की जानकारी के लिए यह अधिस्तुत किया जाता है कि केन्द्र सरकार, आयकर विभाग, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोगार्थ अधोलिखित संगठनों को उनके नाम के अन्तर्गत उल्लिखित अवधि के लिए "संस्था" श्रेणी के अन्तर्गत विनियमित शर्तों के अधीन अनुमोदित करती है:-

- (i) अधिस्तुत संस्था अनुसंधान गतिविधियों के लिए अपना लेखा वही रखेगी ;
- (ii) अधिस्तुत संस्था हर एक वित्त वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिपोर्ट प्रतिवर्ष 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग, प्रौद्योगिक भवन, न्यू मेहरौली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी ;
- (iii) अधिस्तुत संस्था केन्द्र सरकार की तरफ से नामित कर निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अलावा अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपनी अनुसंधान गतिविधियों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (i)

के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय और व्यय खाते परीक्षा की एक प्रति प्रतिवर्ष 31 अक्टूबर को अथवा उससे पहले संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट), 10 मिडलटन रोड, 5वां तल, कलकत्ता-700071 (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रस्तुत करेगा।

क्रम अनुमोदित संगठन का अधिस्तुत जिसके लिए अधिस्तुतना सं. नाम प्रभावी है

1. कैरीटस इंडिया, 1-4-2000 से 31-3-2003
सी.बी.सी.आई. लॉक
अनोका पोस्ट (गोद
हाकबाना) नई दिल्ली

टिप्पणी :—अधिस्तुत संस्था को यह सजाह दी जाती है कि वे अनुमोदन के नवीनीकरण हेतु पहले से ही तीन प्रतियों में अपने अधिकार में आने वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीनीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग को भी सीधे भेजी जाएंगी।

[अधिस्तुतना सं. 207/2001/फा. सं. 203/28/2001-आयकर वि.-II]

पंकज कुमार, अवर सचिव

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 11th July, 2001

(INCOME TAX)

S.O. 1799.—It is hereby notified for general information that the organisations mentioned below have been approved by the Central Government for the period mentioned against their names, for the purpose of clause (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961, read with Rule 6 of the Income-tax Rules, 1962 under the category "Institution" subject to the following conditions:—

- (i) The notified Institution shall maintain separate books of accounts for its research activities;
- (ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;
- (iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income-tax (Exemptions), 10 Middleton

Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income tax/Director of Income tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited annual Accounts and also a copy of audited Income & Expenditure Account in respect of its research activities for which exemption was granted under Sub-section (1) of section 35 of Income tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

S. No.	Name of the organisation approved	Period for which Notification is effective
I.	CARITAS India, C.B.C.I, Ashoka Place (Gole Dak Khanna) New Delhi	1-4-2000 to 31-3-2003

Notes: The notified Institutions are advised to apply in triplicates and well in advance for renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 207/2001/F.No. 203/28/2001-ITA-II]

PANKAJ KUMAR, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

शुद्धि-पत्र

नई दिल्ली, 10 जुलाई, 2001

का. आ. 1800.—इस मंत्रालय की दिनांक 1-11-2000 की समसंख्यक अधिसूचना के दिनांक 11-6-2001 के शुद्धि-पत्र में आंशिक संशोधन करते हुए कृपया मिसिन सं. वी. 12017/10/96-पी.एम.एस. के स्थान पर संख्या वी. 12018/18/2000-पी.एम.एस. पढ़ा जाए। शेष भाग वैसा ही रहेगा।

[सं. वी. 12018/18/2000-पी.एम.एस.]
एस.के. राव, निदेशक

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health)

CORRIGENDUM

New Delhi, the 10th July, 2001

S.O. 1800.—In partial modification of corrigendum dated 11-6-2001 of this Ministry's notification of even number, dated 1-11-2000, the file number may please be read as No.V.12018/18/2000-PMS in place of V.12017/10/96-PMS. The remaining part will be the same.

[No. V-12018/18/2000-PMS]
S. K. RAO, Director

कोयला मंत्रालय

नई दिल्ली, 10 जुलाई, 2001

का. आ. 1801.—केन्द्रीय सरकार की यह प्रतीति होता है कि इसमें उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभि-प्राप्त किए जाने की संभावना है ;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ;

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. सी.-1(ई)III/जे जे एन आर/676-102000 तारीख 3 अक्टूबर, 2000 का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाइन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या कन्वेक्टर, यन्त्रमाल (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कलकत्ता के कार्यालय में किया जा सकता है ;

इस अधिसूचना के अन्तर्गत आने वाली भूमि में, हिनबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी तकशों, चाटों और अन्य वस्तुओं को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर भार साधक अधिकारी/विभागध्यक्ष (राजस्व), वेस्टर्न कोलफील्ड्स लिमिटेड, कोल इस्टेट, सिविल लाइन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेंगे।

यवतुची

पाथरी खंड

कमी उत्तरी क्षेत्र

जिवा यवतमाल (महाराष्ट्र)

[खंडांक सं. सी.-1(ई) III/जे एन आर/676-102000 तारीख 3 अक्टूबर, 2000]

क्रम संख्या	ग्राम का नाम	पटवारी सूचित सं.	तहसील	जिला	क्षेत्र हेक्टेयर में	टिप्पणी
1.	बखड	20	मारेगांव	यवतमाल	401.00	भाग
2.	बिचाला	19	मारेगांव	यवतमाल	205.00	भाग
3.	सालेभटी	20	मारेगांव	यवतमाल	65.00	भाग
4.	पाथरी	19	मारेगांव	यवतमाल	180.00	भाग
5.	पांडरकबडा	19	मारेगांव	यवतमाल	60.00	भाग
6.	भालेबाडी	19	मारेगांव	यवतमाल	65.00	भाग
7.	पिसगांव	19	मारेगांव	यवतमाल	175.00	भाग
8.	पाहापल	20	मारेगांव	यवतमाल	1.00	भाग
9.	गौराला	20	मारेगांव	यवतमाल	115.00	भाग
					कुल क्षेत्र : 1267.00 हेक्टेयर (लगभग)	
					या	
					3130.757 एकड़ (लगभग)	

सीमा वर्णन :

- क-ख : रेखा बिन्दु "क" से आरंभ होती है और ग्राम पिसगांव, भालेबाडी, पाथरी, सालेभटी, बखड से होकर जाती है फिर ग्राम गौराला से होकर आगे बढ़ती है और बिन्दु "ख" पर मिलती है ।
- ख-ग-घ-ङ : रेखा ग्राम गौराला, बखड, बिचाला, पांडरकबडा से होकर जाती है फिर ग्राम पिसगांव से होकर आगे बढ़ती है और बिन्दु "ङ" पर मिलती है ।
- ङ-क : रेखा ग्राम पिसगांव, पाहापल से होकर जाती है तथा फिर से ग्राम पिसगांव से होकर आगे बढ़ती है और आरंभिक बिन्दु "क" पर मिलती है ।

[संख्या 43015/5/2001-सी आर आई डब्ल्यू]

संजय बहादुर, उप सचिव

MINISTRY OF COAL

New Delhi, the 10th July, 2001

S.O. 1891.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing No. C-I(E)III/JJNR/676-102000 dated the 3rd October, 2000 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or in the office of the Collector, Yavatmal (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands covered by this notification may deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Officer-in-Charge/Head of the Department (Revenue), Western Coalfields limited, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification.

SCHEDULE

PATHARI BLOCK

WANI NORTH AREA

DISTRICT YAVATMAL (MAHARASHTRA)

(Plan No. C-I(E)III/JJNR/676-102000 dated the 3rd October, 2000).

Serial Number	Name of village	Patwari circle number	Tahsil	District	Area in Hectares	Remarks
1	Warud	20	Maregaon	Yavatmal	401.00	Part
2.	Chinchala	19	Maregaon	Yavatmal	205.00	Part
3.	Salebhati	20	Maregaon	Yavatmal	65.00	Part
4.	Pathari	19	Maregaon	Yavatmal	180.00	Part
5.	Pandharkawada	19	Maregaon	Yavatmal	60.00	Part
6.	Bhalewadi	19	Maregaon	Yavatmal	65.00	Part
7.	Pisgaon	19	Maregaon	Yavatmal	175.00	Part
8.	Pahapal	20	Maregaon	Yavatmal	1.00	Part
9.	Gaurala	20	Maregaon	Yavatmal	115.00	Part
Total Area :					1267.00 hectares	(approximately)
					or	3130.757 acres
						(approximately)

Boundary description:—

- A—B Line starts from point 'A' and passes through villages Pisgaon, Bhalewadi, Pathari, Salebhati, Warud then proceeds through village Gaurala and meets at point 'B'.
- B—C—D—E Line passes through villages Gaurala, Warud, Chinchala, Pandharkawada, then proceeds through village Pisgaon and meets at point 'E'.
- E—A Line passes through villages Pisgaon, Pahapal then proceeds again through village Pisgaon and meets at starting point 'A'.

[No. 43015/5/2001-PRIW]

SANJAY BAHADUR, Dy. Secy.

शुद्धि पत्र

नई दिल्ली, 17 जुलाई, 2001

का.आ. 1802 :—भारत के राजपत्र, तारीख 24 मार्च, 2001 के भाग 2, खंड-3, उपखंड (ii) में पृष्ठ क्रमांक-1189 से 1192 पर प्रकाशित, भारत सरकार, कोयला मंत्रालय की अधिसूचना का.आ. 599 तारीख 12 मार्च, 2001 में:

पृष्ठ क्रमांक-1189, अधिसूचना में,

पंक्ति 4 "(अर्जन और विकास अधिनियम" के स्थान पर "(अर्जन और विकास) अधिनियम" पढ़ें।

पंक्ति 4, "(मध्य प्रदेश)" के स्थान पर "(छत्तीसगढ़)" पढ़ें।

पृष्ठ क्रमांक—1190, तालिका में, क्षेत्र हेक्टर में स्तंभ के नीचे,

क्रम संख्या 2, "1,059" के स्थान पर "1.059" पढ़ें।

ग्राम लंही कोठार (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक में,

पंक्ति 3, "169 (भाग), 180 (भाग)" के स्थान पर 179 (भाग), 180 (भाग)" पढ़ें।

ग्राम धनवाही (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक में,

पंक्ति 1, "28, (भाग)," के स्थान पर "28 (भाग)" पढ़ें।

पंक्ति 2, "155 (ग)," के स्थान पर "155 (भाग)" पढ़ें।

पंक्ति 2, "155,170," के स्थान पर "155/170," पढ़ें।

मीमा वर्णन में, रेखा क-ख,

पंक्ति 3, "ग्राम लंही कोठार" के स्थान पर "ग्राम लंही कोठार" पढ़ें।

[सं. 43015/01/2000-पी आर आई डब्ल्यू]

संजय बहादुर, उप सचिव

CORRIGENDUM

New Delhi, the 17th July, 2001

S.O. 1802.—In the notification of the Government of India in the Ministry of Coal No.S.O.599, dated 12th March, 2001, published at pages 1193 to 1196 of the Gazette of India Part-II, Section-3, Sub-Section (ii) dated the 24th March, 2001—

at page 1194, (a) in plot numbers to be acquired in village Lahangi Kothar (Part), in line 2, for “57 (Part), 458 to 63” read “57(Part), 58 to 63”;

(b) in Boundary description, in A-B, in line 4, for “Lahangi Kohar” read “Lahangi Kothar”,

(c) in D-E, in line 2, for “Lahangi Kothan” read “Lahangi Kothar”.

at page 1195, in H 1, J and 2nd, for the words in line 1 and 2, “Dhanbhai-Nausemar” read “Dhanbahi-Nausemar”.

[No.43015/1/2000-PRIW]

SANJAY BAHADUR, Dy. Secy.

नई दिल्ली, 17 जुलाई, 2001

का.आ. 1803 :—केन्द्रीय सरकार को यह प्रतीत होता है कि इसमें उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है ;

अतः, अब, केन्द्रीय सरकार कोयला प्रारम्भ क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, उस क्षेत्र में कोयले का पूर्वोक्त करने के अपने आशय की सूचना देती है ;

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. सी.-1(ई) III/एफ यू आर/680-102000 तारीख 23 अक्टूबर, 2000 का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में या कोयला निर्यातक, 1, काऊंसिल हाउस स्ट्रीट, कलकत्ता के कार्यालय में किया जा सकता है ;

इस अधिसूचना के अन्तर्गत आने वाली भूमि में, हितवद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चाटों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिनों के भीतर भार साधक अधिकारी/विभागाध्यक्ष (राजस्व), वेस्टर्न कोलफील्ड्स लिमिटेड, कोल ईस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेंगे ।

अनुसूची

मकर धोकरा-1 ओ.सी. खंड

उमरेर क्षेत्र

जिला नागपुर (महाराष्ट्र)

(रेखांक सं. सी.-1(ई) III/एफ यू आर/680-102000 तारीख 23 अक्टूबर, 2000)

क्रम	ग्राम का नाम	पटवारी सर्कल सं.	तहसील	जिला	क्षेत्र हेक्टेयर में	टिप्पणी
संख्या						
1.	कान्हवा	22	उमरेर	नागपुर	145.00	भाग
2.	सिरपुर	22	उमरेर	नागपुर	80.00	भाग
कुल क्षेत्र :					225.00 हेक्टेयर (लगभग)	
					या	
					555.99 एकड़ (लगभग)	

सीमा वर्णन :

क-ख : रेखा बिन्दु “क” से आरंभ होती है और ग्राम कान्हवा से होकर जाती है फिर ग्राम सिरपुर से होकर आगे बढ़ती है और बिन्दु “ख” पर मिलती है ।

ख-ग : रेखा ग्राम सिरपुर से होकर जाती है और ग्राम सिरपुर के बाह्य सीमा के साथ-साथ होती हुई जाती है और बिन्दु “ग” पर मिलती है ।

- ग-घ : रेखा ग्राम सिरपुर से होकर जाती है और बिन्दु "घ" पर मिलती है ।
- घ-ङ-च : रेखा ग्राम कान्हवा से होकर जाती है और बिन्दु "च" पर मिलती है ।
- च-क : रेखा ग्राम कान्हवा और कलमना की सम्मिलित ग्राम सीमा के साथ-साथ जाती है और प्रारंभिक बिन्दु "क" पर मिलती है ।

[सं. 43015/6/2001-पी प्रार आर्ट डब्ल्यू]

संजय बहादुर, उप सचिव

New Delhi, the 17th July, 2001

S.O. 1803.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing No. C-1(E)III/FUR/680-102000, dated the 23rd October, 2000 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or in the office of the Collector, Nagpur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands covered by this notification may deliver all maps, charts and other documents, referred to in sub-section (7) of section 13 of the said Act to the Officer-in-Charge/Head of the Department (Revenue), Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification.

SCHEDULE

MAKARDHOKRA IOC BLOCK

UMRER AREA

DISTRICT NAGPUR (MAHARASHTRA)

(Plan No. C-1(E)III/FUR/680-102000 dated the 23rd October, 2000).

Serial Number	Name of village	Patwari circle number	Tahsil	District	Area in Hectares	Remarks
1.	Kanhwa	22	Umrer	Nagpur	145.00	Part
2.	Sirpur	22	Umrer	Nagpur	80.00	Part
						Total area : 225.00 hectares (approximately) or 555.99 acres (approximately)

Boundary description:—

- A—B Line starts from point 'A' and passes through village Kanhwa then proceeds through village Sirpur and meets at point 'B'.
- B—C Line passes through village Sirpur and passes along the outer boundary of village Sirpur and meets at point 'C'.
- C—D Line passes through village Sirpur and meets at point 'D'.
- D—E—F Line passes through village Kanhwa and meets at point 'F'.
- F—A Line passes along the common village boundary of villages Kanhwa and Kalamna and meets at starting point 'A'.

[No. 43015/6/2001/PRIW]

SANJAY BAHADUR, Dy. Secy.

नई दिल्ली, 17 जुलाई, 2001

का.आ. 1804 :—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उगावद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है।

अतः, अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. सी.-1(ई)III/जेजेजेआर/683-0201 तारीख 7 फरवरी, 2001 का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल एस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में या कलक्टर, चन्द्रपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, कार्जमिल हाऊस स्ट्रीट, कोलकाता के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत आने वाली भूमि में, हितवद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी तथ्यों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तब्बे दिनों के भीतर भार-नाधिक अधिकारी/विभागाध्यक्ष (राजस्व), वेस्टर्न कोलफील्ड्स लिमिटेड, कोल स्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) को भेजेंगे, अर्थात्:—

अनुसूची

पौनी विस्तारण विवृत परियोजना

बल्लारपुर क्षेत्र

जिला चन्द्रपुर (महाराष्ट्र)

(रेखांक सं. सी.-1(ई)III/जेजेजेआर/683-0201 तारीख 7 फरवरी, 2001)

क्रम	ग्राम का नाम	पटवारी सर्कल सं.	तहसील	जिला	क्षेत्र हेक्टरों में	टिप्पणी
1.	गोवरी	3	राजुरा	चन्द्रपुर	155.00	भाग
2.	अंतरगांव (खुर्द)	7	राजुरा	चन्द्रपुर	70.00	भाग
3.	चिचोली (खुर्द)	3	राजुरा	चन्द्रपुर	945.00	भाग
4.	तिबाला	3	राजुरा	चन्द्रपुर	25.00	भाग
5.	हिरापुर	3	राजुरा	चन्द्रपुर	110.00	भाग
6.	साकरी	2	राजुरा	चन्द्रपुर	945.00	भाग
7.	पौनी	2	राजुरा	चन्द्रपुर	210.00	भाग
8.	चार्ना	1	राजुरा	चन्द्रपुर	105.00	भाग

कुल क्षेत्र : 2565.00 हेक्टेयर (लगभग)

या

6338.115 एकड़ (लगभग)

सीमा वर्णन :

क-ख :

रेखा, बिन्दु "क" से आरंभ होती है और ग्राम पौनी से होती हुई एम.सी.आर. के अन्तर्गत पहले ही से अर्जित खनन पट्टावृत्ति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई बिन्दु "ख" पर मिलती है।

- ख-ग : रेखा, ग्राम पौनी से होकर सी.बी.ए. अधिनियम के अन्तर्गत पहले ही से अर्जित खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई जाती है और बिन्दु "ग" पर मिलती है।
- ग-घ : रेखा, ग्राम साकरी और पौनी की सम्मिलित ग्राम सीमा के साथ-साथ चलती हुई ग्राम साकरी से होते हुए सी.बी.ए. अधिनियम के अन्तर्गत पहले ही से खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई जाती है और बिन्दु "घ" पर मिलती है।
- घ-ङ : रेखा, सी.बी.ए. अधिनियम के अन्तर्गत पहले ही से खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई, ग्राम साकरी से होकर जाती है एवं ग्राम पौनी और साकरी, पौनी और चिचोली (खुर्द) की सम्मिलित ग्राम सीमा के साथ-साथ चलती हुई जाती है फिर ग्राम चिचोली (खुर्द) से होकर जाती है और बिन्दु "ङ" पर मिलती है।
- ङ-च-छ-ज : रेखा एम.सी.आर. के अन्तर्गत पहले ही से अर्जित खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई जाती है और ग्राम चिचोली (खुर्द) से होकर जाती है, फिर ग्राम गोवरी से होकर आगे बढ़ती है और बिन्दु "ज" पर मिलती है।
- ज-झ : रेखा ग्राम गोवरी से होकर सी.बी.ए. अधिनियम के अन्तर्गत पहले ही से अर्जित खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ चलती हुई जाती है और बिन्दु "झ" पर मिलती है।
- झ-ञ : रेखा ग्राम गोवरी से होकर जाती है और बिन्दु "ञ" पर मिलती है।
- ञ-ट : रेखा ग्राम गोवरी और अंतरगांव (खुर्द) की सम्मिलित ग्राम सीमा के साथ-साथ चलती है और बिन्दु "ट" पर मिलती है।
- ट-ड-ड-ड : रेखा ग्राम अंतरगांव (खुर्द), चिचोली (खुर्द), निवाला, हिरापुर से होकर जाती है फिर ग्राम साकरी से होकर आगे बढ़ती है और बिन्दु "ड" पर मिलती है।
- ड-ण-क : रेखा ग्राम साकरी और चाली से होकर जाती है फिर ग्राम बाबापुर और पौनी की सम्मिलित ग्राम सीमा एवं सी.बी.ए. अधिनियम के अन्तर्गत पहले ही से अर्जित खनन पट्टाधृति क्षेत्र की विद्यमान रेखा के साथ-साथ होते हुए जाती है और आरंभिक बिन्दु "क" पर मिलती है।

[संख्या 43015/7/2001-पी आर आर्डी डब्ल्यू]

संजय बहादुर, उप सचिव

New Delhi, the 17th July, 2001

S.O. 1804.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the schedule hereto annexed :

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing No. C-I(E)III/JJRR/683-0201 dated the 7th February, 2001 of the area covered by this notification can be inspected in the Office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or in the office of the Collector, Chandrapur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Kolkata.

All persons interested in the lands covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Officer-in-Charge/Head of the Department

(Revenue), Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification, namely:—

SCHEDULE
PAUNI EXPANSION OPENCAST PROJECT
BALLARPUR AREA
DISTRICT CHANDRAPUR (MAHARASHTRA)

(Plan No. C-I(E)III/JJR/683-0201 dated the 7th February, 2001).

Serial Number	Name of Village	Patwari circle number	Tahsil	District	Area in Hectares	Remarks
1	Gouri	3	Rajura	Chandrapur	155.00	Part
2	Antargaon (Khurd)	7	Rajura	Chandrapur	70.00	Part
3	Chincholi (Khurd)	3	Rajura	Chandrapur	945.00	Part
4	Nimbala	3	Rajura	Chandrapur	25.00	Part
5	Hirapur	3	Rajura	Chandrapur	110.00	Part
6	Sakri	2	Rajura	Chandrapur	945.00	Part
7	Paoni	2	Rajura	Chandrapur	210.00	Part
8	Charli	1	Rajura	Chandrapur	105.00	Part
Total area :					2565.00 hectares (approximately)	
					or	
					6338.115 acres (approximately)	

Boundary description:

- A—B : Line starts from point 'A' and passes through village Paoni along the existing line of Mining Lease Hold Area already acquired under MCR and meets at point 'B'.
- B—C : Line passes through village Paoni along the existing line of Mining Lease Hold Area already acquired under CBA Act and meets at point 'C'.
- C—D : Line passes along the common village boundary of villages Sakri and Paoni then passes through village Sakri along the existing line of Mining Lease Hold Area already acquired under CBA Act and meets at point 'D'.
- D—E : Line passes along the existing line of Mining Lease Hold Area already acquired under CBA Act and passes through village Sakri and passes along the common village boundary of villages Paoni and Sakri, Paoni and Chincholi (Khurd) then passes through village Chincholi (Khurd) and meets at point 'E'.
- E—F—G—H : Line passes along the existing line of Mining Lease Hold Area already acquired under MCR and passes through village Chincholi (Khurd) then proceeds through village Gouri and meets at point 'H'.
- H—I : Line passes through village Gouri along the existing line of Mining Lease Hold Area already acquired under CBA Act and meets at point 'I'.
- I—J : Line passes through village Gouri and meets at point 'J'.
- J—K : Line passes along the common village boundary of villages Gouri and Antargaon (Khurd) and meets at point 'K'.
- K—L—M—N : Line passes through villages Antargaon (Khurd), Chincholi (Khurd) Nimbala, Hirapur then proceeds through village Sakri and meets at point 'N'.
- N—O—A : Line passes through villages Sakri and Charli then passes along the common village boundary of villages Babapur and Paoni and along the existing line of Mining Lease Hold Area already acquired under CBA Act and meets at starting point 'A'.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 जुलाई, 2001

का.प्रा. 1805:—पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 17 के अधीन बनाए गए पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) नियम, 1963 के स्पष्टीकरण के अधीन नियम 4 के परन्तुक के अनुसरण में, सक्षम प्राधिकारी, काण्डला-जामनगर-लोनी एल.पी.जी. पाइपलाइन, गैस अर्थोमिटी ऑफ इंडिया लिमिटेड, जिसे, यथास्थिति, उस क्षेत्र में भूमि में उपयोग का अधिकार निहित किया गया है या उस क्षेत्र में पाइपलाइन का स्वामित्व प्रदान किया गया है, के परामर्श से इससे संबंधित अनुसूची के स्तम्भ 8 में यथा वर्णित काण्डला से जामनगर-दिल्ली से होकर लोनी संयुक्त गैस की पाइपलाइन बिछाने के कार्य की समाप्ति की तारीख की घोषणा करता है।

अनुसूची

जिला	तहसील	गांव	अधिसूचना धारा 3(1)	
			राजपत्र के प्रकाशन की तिथि	का.प्रा. सं. और तिथि
1	2	3	4	5
अलवर	तिजारा	अलावलपुर	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999
		कलगांव	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		माजरी गुजर	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		भुण्डाना	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999
		सरकनपुर	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999
		ईशरोदा	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999

अधिसूचना धारा 6(1)

समापन कार्य की तारीख

राजपत्र के प्रकाशन की तिथि	का.प्रा. सं. और तिथि	
6	7	8
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	

1	2	3	4	5
ग्राम	तहसील	जिला	दिनांक	दिनांक
		बिंदरपुर	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999
		बंसीपुर	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		बनगाहेडी	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		बोलीपहाडी	362 दिनांक 23 जून, 1999 52 दिनांक 26 दिसम्बर, 1998 453 दिनांक 24 जुलाई, 1999	477 (अ) दिनांक 23 जून, 1999 2684 (अ) दिनांक 10 दिसम्बर, 1998 597 (अ) दिनांक 24 जुलाई, 1999
		रम्भाना	52 दिनांक 26 दिसम्बर, 1998 362 दिनांक 23 जून, 1999 453 दिनांक 24 जुलाई, 1999	2684 (अ) दिनांक 10 दिसम्बर, 1998 477 (अ) दिनांक 23 जून, 1999 597 (अ) दिनांक 24 जुलाई, 1999
6	7	8	9	10
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000		
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000		
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000		
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000		
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000		
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000		
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000		
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000		
419 दिनांक 7 जुलाई, 1999	553 (अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000		
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000		
1	2	3	4	5
ग्राम	तहसील	जिला	दिनांक	दिनांक
		बिछाला	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		नानगाहेडी	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		बाबडीबूँव	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		घाटनकली	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		बाबटी	52 दिनांक 26 दिसम्बर, 1998	2684 (अ) दिनांक 10 दिसम्बर, 1998
		पञ्चरेडी	453 दिनांक 24 जुलाई, 1999 751 दिनांक 7 दिसम्बर, 1999	597 (अ) दिनांक 24 जुलाई, 1999 1218 (अ) दिनांक 6 दिसम्बर, 1999
		बन्दापुर	751 दिनांक 7 दिसम्बर, 1999	1218 (अ) दिनांक 6 दिसम्बर, 1999
		बाडी	828 दिनांक 22 दिसम्बर, 1998	1093 (अ) दिनांक 22 दिसम्बर, 1998

6	7	8
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
377 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108, (अ) दिनांक 11 नवम्बर, 1999	
432 दिनांक 29 जून, 2000	613(अ) दिनांक 29 जून, 2000	31 अगस्त, 2000
432 दिनांक 29 जून, 2000	613(अ) दिनांक 29 जून, 2000	31 अगस्त, 2000
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000

1	2	3	4	5
प्रलम्बर	तिजारा	ग्वालदा	828 दिनांक 22 दिसम्बर, 1998	1093(अ) दिनांक 22 दिसम्बर, 1998
			751 दिनांक 7 दिसम्बर, 1999	1218 (अ) दिनांक 6 दिसम्बर 1999
		चौपानकी	828 दिनांक 22 दिसम्बर, 1998	1093(अ) दिनांक 22 दिसम्बर, 1998
			751 दिनांक 7 दिसम्बर, 1999	1218 (अ) दिनांक 6 दिसम्बर, 1999
		हुसेपुर	828 दिनांक 22 दिसम्बर, 1998	1093(अ) दिनांक 22 दिसम्बर, 1998
			751 दिनांक 7 दिसम्बर, 1999	1218 (अ) दिनांक 6 दिसम्बर, 1999
		गंधोला	828 दिनांक 22 दिसम्बर, 1998	1093 (अ) दिनांक 22 दिसम्बर, 1998
			751 दिनांक 7 दिसम्बर, 1999	1218 (अ) दिनांक 6 दिसम्बर, 1999
		निम्बाहिडी	828 दिनांक 22 दिसम्बर, 1998	1093(अ) दिनांक 22 दिसम्बर, 1998
			362 दिनांक 23 जून, 1999	477 (अ) दिनांक 23 जून, 1999

6	7	8
432 दिनांक 29 जून, 2000	613 (अ) दिनांक 29 जून, 2000	31 अगस्त, 2000
432 दिनांक 29 जून, 2000	613 (अ) दिनांक 29 जून, 2000	31 अगस्त, 2000
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
432 दिनांक 29 जून, 2000	613(अ) दिनांक 29 जून, 2000	
419 दिनांक 7 जुलाई, 1999	553(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
432 दिनांक 29 जून, 2000	613(अ) दिनांक 29 जून, 2000	
544 दिनांक 8 सितम्बर 1999	723(अ) दिनांक 2 सितम्बर, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1108 (अ) दिनांक 11 नवम्बर, 1999	

1	2	3	4	5
अलवर	बानसूर	लालपुरा	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		बामदयाल	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		खेडाश्यामपुरा	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
			362 दिनांक 23 जून, 1999	477(अ) दिनांक 23 जून, 1999
		माण्डली	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		लाडपुरा	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		गुवाडा	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		चैनपुर	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 दिसम्बर, 1998

6	7	8
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
544 दिनांक 2 नवम्बर, 1999	725 (अ) दिनांक 2 नवम्बर, 1999	
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000
140 दिनांक 16 मार्च, 1999	174(अ) दिनांक 16 मार्च, 1999	31 जुलाई, 2000

1	2	3	4	5
अलवर	बानसूर	छिपारी	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		बाढभावासिंह	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		फतेहपुर	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		बाढघुघाला	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		अगडतेकला	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		हरसोरा	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
			453 दिनांक 24 जुलाई, 1999	597(अ) 24 जुलाई, 1999

6	7	8
210 दिनांक 20 अप्रैल, 1999	275(अ) दिनांक 20 अप्रैल, 1999	31 जुलाई, 2000
544 दिनांक 2 नवम्बर, 1999	725 (अ) दिनांक 2 नवम्बर, 1999	
210 दिनांक 20 अप्रैल, 1999	275(अ) दिनांक 20 अप्रैल, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
255 दिनांक 17 मई, 1999	346(अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	

1	3	4	5	
अलवर	बानसूर	मोठका	140 दिनांक 16 मार्च, 1999	171(अ) दिनांक 16 मार्च, 1999
		धीरपुर जगीर	50 दिनांक 1 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		नवलपुरा	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
			362 दिनांक 23 जून, 1999	477(अ) दिनांक 23 जून, 1999
		खीयाहेडी	50 दिनांक 12 दिसम्बर 1998	2558 दिनांक 27 नवम्बर, 1998
		मिलकपुर	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		मजरा रावत	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998

6	7	8
419 दिनांक 7 जुलाई, 1999	555 (अ) दिनांक 7 जुलाई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	
255 दिनांक 16 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	

अनुसूची

1	2	3	4	5
अलवर	बानसूर	नयाबास	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		बासशेखावत	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998
		बुचियाघाम	47 दिनांक 21 नवम्बर, 1998	2378 दिनांक 17 नवम्बर, 1998
		बानसूर	47 दिनांक 21 नवम्बर, 1998	2387 दिनांक 17 नवम्बर, 1998
		बावली का बास	50 दिनांक 12 दिसम्बर, 1998	2258 दिनांक 27 नवम्बर, 1998
		नारोल	50 दिनांक 12 दिसम्बर, 1998	2558 दिनांक 27 नवम्बर, 1998

6	7	8
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
210 दिनांक 20 अप्रैल, 1999	275 (अ) दिनांक 20 अप्रैल, 1999	31 जुलाई, 2000
210 दिनांक 20 अप्रैल, 1999	275 (अ) दिनांक 20 अप्रैल, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
255 दिनांक 17 मई, 1999	346 (अ) दिनांक 17 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1107 (अ) दिनांक 11 नवम्बर, 1999	

1	2	3	4	5
अलवर	बानसूर	भांठा	140 दिनांक 16 मार्च, 1999	171(अ) दिनांक 16 मार्च, 1999
अलवर	मुण्डावर	नांगल सुल्कीकडा	52 दिनांक 26 दिसम्बर, 1998	2687(अ) दिनांक 10 दिसम्बर, 1998
		पहल	52 दिनांक 26 दिसम्बर, 1998	2687(अ) दिनांक 10 दिसम्बर, 1998
		रानोट	52 दिनांक 26 दिसम्बर, 1998	2687(अ) दिनांक 10 दिसम्बर, 1998
		ततारपुर	52 दिनांक 26 दिसम्बर, 1998	2687(अ) दिनांक 10 दिसम्बर, 1998
		रायपुर	140 दिनांक 16 मार्च, 1999	172(अ) दिनांक 16 मार्च, 1999
		रसगन	140 दिनांक 16 मार्च, 1999	172(अ) दिनांक 16 मार्च, 1999

6	7	8
राजपत्र के प्रकाशन की तिथि	का. ग्रा. सं. और तिथि	समापन कार्य की तारीख
419 दिनांक 7 जुलाई, 1999	555(अ) दिनांक 7 जुलाई, 1999	31 जुलाई, 2000
274 दिनांक 24 मई, 1999	369(अ) दिनांक 24 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1110(अ) दिनांक 11 नवम्बर, 1999	
274 दिनांक 24 मई, 1999	369(अ) दिनांक 24 मई, 1999	31 जुलाई, 2000
274 दिनांक 24 मई, 1999	369(अ) दिनांक 24 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1110(अ) दिनांक 11 नवम्बर, 1999	
274 दिनांक 24 मई, 1999	369(अ) दिनांक 24 मई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1110(अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	556(अ) दिनांक 7 जुलाई, 1999	31 जुलाई, 2000
419 दिनांक 7 जुलाई, 1999	556(अ) दिनांक 7 जुलाई, 1999	31 जुलाई, 2000
677 दिनांक 15 नवम्बर, 1999	1110(अ) दिनांक 11 नवम्बर, 1999	

1	2	3	4	5
अलवर	किशनगढ़ बाम	बधेरी कला	52 दिनांक 26 दिसम्बर, 1998	2686 (अ) दिनांक 10 दिसम्बर, 1998
		माछरोली	52 दिनांक 26 दिसम्बर, 1998	2686(अ) दिनांक 10 दिसम्बर, 1998
			362 दिनांक 23 जून, 1999	477(अ) दिनांक 23 जून, 1999
		बस्सी बीरथल	52 दिनांक 26 दिसम्बर, 1998	2686(अ) दिनांक 10 दिसम्बर, 1998
			362 दिनांक 22 जून, 1999	477 (अ) दिनांक 23 जून, 1999
		आमूबाम	52 दिनांक 26 दिसम्बर, 1998	2686(अ) दिनांक 10 दिसम्बर, 1998
		खेड़ी	140 दिनांक 16 मार्च, 1999	170(अ) दिनांक 16 मार्च, 1999
		गुगलहेड़ी	140 दिनांक 16 मार्च, 1999	170(अ) दिनांक 16 मार्च, 1999
		नया गाँव	453 दिनांक 24 जुलाई, 1999	597(अ) दिनांक 24 जुलाई, 1999

6	7	8
544 दिनांक 6 सितम्बर, 1999	720(अ) दिनांक 2 सितम्बर, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1109(अ) दिनांक 11 नवम्बर, 1999	31 अगस्त, 2000
544 दिनांक 6 सितम्बर, 1999	720(अ) दिनांक 2 सितम्बर, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1109(अ) दिनांक 11 नवम्बर, 1999	
419 दिनांक 7 जुलाई, 1999	554(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
544 दिनांक 6 सितम्बर, 1999	720(अ) दिनांक 2 सितम्बर, 1999	31 अगस्त, 2000
419 दिनांक 7 जुलाई, 1999	554(अ) दिनांक 7 जुलाई, 1999	31 अगस्त, 2000
793 दिनांक 23 दिसम्बर, 1999	1274(अ) दिनांक 23 दिसम्बर, 1999	31 अगस्त, 2000

1	2	3	4	5
अलवर	कोटकासिम	करनड	52 दिनांक 26 दिसम्बर, 1998	2688(अ) दिनांक 10 दिसम्बर, 1998
			362 दिनांक 23 जून, 1999	477(अ) दिनांक 23 जून, 1999
		भोजपुर	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		हासपुर खुर्द	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		हरसोली जकवाल	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		जटियाणा	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		झरियाणा	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		शहजादपुर	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		बवेरी खुर्द	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998
		गिरवास	797 दिनांक 9 दिसम्बर, 1998	1057(अ) दिनांक 9 दिसम्बर, 1998

6	7	8
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1111(अ) दिनांक 11 नवम्बर, 1999	
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1111 (अ) दिनांक 11 नवम्बर, 1999	
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1111(अ) दिनांक 11 नवम्बर, 1999	
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1111(अ) दिनांक 11 नवम्बर, 1999	
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
345 दिनांक 17 जून, 1999	451(अ) दिनांक 17 जून, 1999	31 अगस्त, 2000
677 दिनांक 15 नवम्बर, 1999	1111(अ) दिनांक 11 नवम्बर, 1999	

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 16th July, 2001

S.O. 1805.—In pursuance of proviso to rule 4 under explanation of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, framed under Section 17 of the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Competent Authority, Kandla/Jamnagar-Loni LPG Pipeline in consultation with Gas Authority of India Limited, with whom the right of user in land in that area has been vested or ownership of the pipeline in that area vest as the case may be, hereby declares the date of termination of operation of laying liquefied petroleum gas pipeline from Kandla/Jamnagar-Loni (via Delhi) as mentioned in column (8) of the Schedule annexed herewith.

SCHEDULE

(Annexed)

District	Tehsil	Village	Notification U/s 3(1)	
			Date of Publication (of Gazette)	S.O. No. and Date
1	2	3	4	5
Alwar	Tijara	Alawalpur	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Kalgaon	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Majri Gurjar	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Mandana	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Sarkanpur	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Ishroda	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999

Notification U/s 6(1)		Date of Termination of Operations
Date of Publication	S.O. No. and Date	
6	7	8
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999,	553 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	

1	2	3	4	5
Alwar	Tijara	Khidarpur	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Jokhupur	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Bubkagheda	52 dated 26 December, 1998 362 dated 23 June, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Dholi Phari	52 dated 26 December, 1998 453 dated 24 July, 1999	2684 (E) dated 10 December, 1998 597 (E) dated 24 July, 1999
		Rambhana	52 dated 26 December, 1998 362 dated 23 June, 1999 453 dated 24 July, 1999	2684 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999 597 (E) dated 24 July, 1999

6	7	8
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November 1999	
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	

1	2	3	4	5
Alwar	Tijara	Bichala	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Nataghedi	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Chawandi Khurd	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Patan Kalan	52 dated 26 December, 1998	2684 (E) dated 10 December, 1998
		Pawati	52 dated 26 December, 1998 453 dated 24 July, 1999	2684 (E) dated 10 December, 1998 597 (E) dated 24 July, 1999
		Pathoudi	751 dated 7 December, 1999	1218 (E) dated 6 December, 1999
		Bandapur	751 dated 7 December, 1999	1218 (E) dated 6 December, 1999

6	7	8
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
419 dated 7 July, 1999	533 (E) dated 7 July, 1999	31 August, 2000
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	31 August, 2000
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	31 August, 2000

1	2	3	4	5
Alwar	Tijara	Khedhi	828 dated 22 December, 1998	1093 (E) dated 22 December 1998
		Gwalda	828 dated 22 December, 1998	1093 (E) dated 22 December, 1998
			751 dated 7 December, 1999	1218 (E) dated 6 December, 1999
		Chopanki	828 dated 22 December, 1998	1093 (E) dated 22 December, 1998
			751 dated 7 December, 1999	1218 (E) dated 6 December, 1999
		Huesepur	828 dated 22 December, 1998	1093 (E) dated 22 December, 1998
			751 dated 7 December, 1999	1218 (E) dated 6 December, 1999
		Gandhola	828 dated 22 December, 1998	1093 (E) dated 22 December, 1998
			751 dated 7 December, 1999	1218 (E) dated 6 December, 1999
		Nimbahedi	828 dated 22 December, 1998	1093 (E) dated 22 December, 1998
			362 dated 23 June, 1999	477 (E) dated 23 June, 1999

6	7	8
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	31 August, 2000
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	31 August, 2000
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	
419 dated 7 July, 1999	553 (E) dated 7 July, 1999	31 August, 2000
432 dated 29 June, 2000	613 (E) dated 29 June, 2000	
677 dated 15 November, 1999	1108 (E) dated 11 November, 1999	

1	2	3	4	5
Alwar	Bansur	Lalpura	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Basdyal	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Khera-Shyampur	47 dated 21 November, 1998	2387 dated 17 November, 1998
			362 dated 23 June, 1999	477 (E) 23 June, 1999
		Mandli	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Ladpura	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Guwara	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Chainpura	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Chhipari	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Bhad Bhaw-Singh	47 dated 21 November, 1998	2387 dated 17 November, 1998

544 dated 6 September, 1999	723 (E) dated 2 September, 1999	
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	31st July 2000
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
544 dated 2 November, 1999	725 (E) dated 2 November, 1999	
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
140 dated 16 March, 1999	174 (E) dated 16 March, 1999	31st July, 2000
210 dated 20 April, 1999	275 (E) dated 20 April, 1999	31st July, 2000
544 dated 20 November, 1999	725 (E) dated 20 November, 1999	
210 dated 20 April, 1999	275 (E) dated 20 April, 1999	31st July, 2000

1	2	3	4	5
Alwar	Bansur	Fatehpur	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Dhundala	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Jhagdetkalan	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Harsora	50 dated 12 December, 1998	2558 dated 27 November, 1998
			453 dated 24 July, 1999	597 (E) dated 24 July, 1999
		Dhirpur Jagir	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Nawalpura	50 dated 12 December, 1998	2558 dated 27 November, 1998
			362 dated 23 June, 1999	477 (E) dated 23 June, 1999
		Khiyabheri	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Milakpura	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Mauthuka	140 dated 16 March, 1999	171 (E) dated 16 March, 1999
		Majra Rawat	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Nayabas	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Bass	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Shekhawat		
		Bachiya Bass	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Bansur	47 dated 21 November, 1998	2387 dated 17 November, 1998
		Bawli ka Bas	50 dated 12 December, 1998	2558 dated 27 November, 1998
		Naroal	50 dated 12 December, 1998	2558 dated 27 November, 1998

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255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	31st July, 2000
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
419 dated 7 July, 1999	555 (E) dated 7 July, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
210 dated 20 April, 1999	275 (E) dated 20 April, 1999	31st July, 2000
210 dated 20 April, 1999	275 (E) dated 20 April, 1999	31st July, 2000
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
255 dated 17 May, 1999	346 (E) dated 17 May, 1999	31st July, 2000
677 dated 15 November, 1999	1107 (E) dated 11 November, 1999	

1	2	3	4	5
Alwar	Bansur	Mandha	140 dated 16 March, 1999	171 (E) dated 16 March, 1999
Alwar	Mundawar	Nangal Santokhara	52 dated 26 December, 1998	2687 (E) dated 10 December, 1998
		Pehal	52 dated 26 December, 1998	2687 (E) dated 10 December, 1998
		Ranoth	52 dated 26 December, 1998	2687 (E) dated 10 December, 1998
		Tatarpur	52 dated 26 December, 1998	2687 (E) dated 10 December, 1998
		Raipur	140 dated 16 March, 1999	172 (E) dated 16 March, 1999
		Rasgaon	140 dated 16 March, 1999	172 (E) dated 16 March, 1999

6	7	8
419 dated 7 July, 1999	555 (E) dated 7 July, 1999	31 July, 2000
274 dated 24 May, 1999	369 (E) dated 24 May, 1999	31 July, 2000
677 dated 15 November, 1999	1110 (E) dated 11 November, 1999	
274 dated 24 May, 1999	369 (E) dated 24 May, 1999	31 July, 2000
274 dated 24 May, 1999	369 (E) dated 24 May, 1999	31 July, 2000
677 dated 15 November, 1999	1110 (E) dated 11 November, 1999	
274 dated 24 May, 1999	369 (E) dated 24 May, 1999	31 July, 2000
677 dated 15 November, 1999	1110 (E) dated 11 November, 1999	
419 dated 7 July, 1999	556 (E) dated 7 July, 1999	31 July, 2000
419 dated 7 July, 1999	556 (E) dated 7 July, 1999	31 July, 2000
677 dated 15 November, 1999	1110 (E) dated 11 November, 1999	

1	2	3	4	5
Alwar	Kishangarh Bas	Bagheri Kalan Machroli	52 dated 26 December, 1998 52 dated 26 December, 1998 362 dated 23 June, 1999	2686 (E) dated 10 December 1998 2686 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Bassi Birthal	52 dated 26 December, 1998 362 dated 23 June, 1999	2686 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Zamuwas	52 dated 26 December, 1998	2686 (E) dated 10 December, 1998
		Khera	140 dated 16 March, 1999	170 (E) dated 16 March, 1999
		Gugal Hedi	140 dated 16 March, 1999	170 (E) dated 16 March, 1999
		Nava Gaon	453 dated 24 July, 1999	597 (E) 24 July, 1999

6	7	8
544 dated 6 September, 1999	720 (E) dated 2 September, 1999	31 August, 2000
677 dated 15 November, 1999	1109 (E) dated 11 November, 1999	31 August 2000
544 dated 6 September, 1999	720 (E) dated 2 September, 1999	31 August, 2000
677 dated 15 November, 1999	1109 (E) dated 11 November, 1999	
419 dated 7 July, 1999	554 (E) dated 7 July, 1999	31 August, 2000
544 dated 6 September, 1999	720 (E) dated 2 September, 1999	31 August, 2000
419 dated 7 July, 1999	554 (E) dated 7 July, 1999	31 August, 2900
793 dated 23 December, 1999	1274 (E) dated 23 December, 1999	31 August, 2000

1	2	3	4	5
Alwar ✓	Kotkasim	Karwar	52 dated 26 December, 1998 362 dated 23 June, 1999	2688 (E) dated 10 December, 1998 477 (E) dated 23 June, 1999
		Bhojpur	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Hanpur Khard	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Harsoli Chekawal	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Jatiana	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Jharina	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Shahzadpur	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Bagheri Khurd	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998
		Girwas	797 dated 9 December, 1998	1057 (E) dated 9 December, 1998

6	7	8
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
677 dated 15 November, 1999	1111 (E) dated 11 November, 1999	
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
677 dated 15 November, 1999	1111 (E) dated 11 November, 1999	
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
677 dated 15 November, 1999	1111 (E) dated 11 November, 1999	
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
677 dated 15 November, 1999	1111 (E) dated 11 November, 1999	
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
345 dated 17 June, 1999	451 (E) dated 17 June, 1999	31 August, 2000
677 dated 15 November, 1999	1111 (E) dated 11 November, 1999	

[F. No. L-14014/12/01-GP (Part-I)]

SWAMI SINGH, Director

नई दिल्ली, 19 जुलाई, 2001

श्रम मंत्रालय

का.आ. 1806.—केन्द्रीय सरकार, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2687 तारीख 4 दिसम्बर, 2000 से निम्नलिखित संशोधन करती है :

“पंजाब रिफाइनरी परियोजना” शब्दों के स्थान पर “गुरु गोबिन्द सिंह रिफाइनरीज लिमिटेड” शब्द रखे जाएंगे।

[सं. आर-31015/5/2000-ओ आर II]

हरिश कुमार, अवर सचिव

New Delhi, the 19th July, 2001

S.O. 1806.—In the notification of Government of India, Ministry of Petroleum and Natural Gas number S.O. 2687 dated 4th December, 2000, Central Government herewith makes the following amendment :

For the words “Punjab Refinery Project” the words “Guru Gobind Singh Refineries Limited” shall be substituted.

[No. R-31015/5/2000-OR II]

HARISH KUMAR, Under Secy.

नई दिल्ली, 19 जुलाई, 2001

का.आ. 1807.—केन्द्रीय सरकार, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 852 तारीख 7 अप्रैल, 2000 में निम्नलिखित संशोधन करती है :

“पंजाब रिफाइनरी परियोजना” शब्दों के स्थान पर “गुरु गोबिन्द सिंह रिफाइनरीज लिमिटेड” शब्द रखे जाएंगे।

[सं. आर-31015/5/2000-ओ आर II]

हरिश कुमार, अवर सचिव

New Delhi, the 19th July, 2001

S.O. 1807.—In the notification of Government of India, Ministry of Petroleum and Natural Gas number S.O. 852 dated 7th April, 2000, Central Government herewith makes the following amendment :

For the words “Punjab Refinery Project” the words “Guru Gobind Singh Refineries Limited” shall be substituted.

[No. R-31015/5/2000-OR II]

HARISH KUMAR, Under Secy.

नई दिल्ली, 4 जुलाई, 2001

का. आ. 1808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, भोपाल के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41011/68/88-डी-2(बी)/आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 4th July, 2001

S.O. 1808.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Bhopal and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41011/68/88-D2(B)/IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/126/89

PRESENT :

Presiding Officer: Shri K. M. Rai.

Shri Shaid Ashik Ali,
S/o Shri Shaid Hatam Ali,
Resident of Old Grain Market,
Bina (Itawa),
Distt. Sagar.

.... Applicant

Versus

The Assistant Engineer,
Central Railway,
Bhopal.

.... Non-applicant

AWARD

Passed on this 12th day of June, 2001

1. The Government of India, Ministry of Labour vide order No. L-41011/68/88-D-2(B) dated 12-6-89 has referred the following dispute for adjudication by this tribunal—

“Whether the management Central Railway Bhopal (MP) has justified to terminate the services of Mr. Ashik Ali S/o Shri Hatam Ali w.e.f. 19-11-86? If not then the concerned workman is entitled to what relief?”

2. The case for the workman is that he was appointed as motor driver on 13-12-86 by the Central Railway and on 19-11-86, his services were terminated. Prior to his termination, he was served with a notice dated 21-10-86 holding him responsible for the accident of the jeep allotted to the Sr. Scale Officer. Prior to termination of his service, neither any chargesheet was served on him nor the DE was conducted. He had acquired the status of temporary employee and was in continuous service for a period of more than 240 days in a calendar year preceding the date of his termination from service. He was not given any retrenchment compensation according to the provisions of Section 25-F of the I.D. Act, 1947. In this way the management's order for termination from service is illegal and deserves to be quashed. Hence he is entitled to reinstatement with back wages.

3. The case for the management is that on 31-12-85, the workman was employed as casual motor driver on daily wage basis. The workman did not acquire the status of temporary employee and therefore no DE was conducted for the alleged misconduct before terminating his services w.e.f. 19-11-86. He never continuously worked for more than 240 days in a calendar year preceding the date of termination of the service. On the report of Sr. Scale Officer, Shri N. K. Nimbark, The Preliminary enquiry was held and the workman was not found suitable for driving vehicle. In the case of workman, no DE was required to be conducted prior to termination to his service. The casual labour can acquire the status of temporary labour only when he continuously works for 360 days in a calendar year in the project. Provisions of Section 25-F of the I.D. Act, 1947 are not applicable in the present case. Rule 2301 is not applicable to the project casual labour as contended by the workman. On 17-10-86, the workman was driving the vehicle of Sr. Scale Officer Shri S. K. Nimbark and at that very moment of time, he dashed against a tanga causing damage to the vehicle. This accident took place due to negligent driving of the workman. He was therefore not found suitable for the job of driver and consequently his services were terminated. The termination order is perfectly just and proper and does not need any interference. The workman is not entitled to any relief as claimed by him.

4. The following issues arise for decision in this case :—

1. Whether the workman is entitled to reinstatement with back wages?
2. Relief and costs?

5. Issue No. 1 : The workman has stated in para-7 of his statement that he was given written appointment order by the management. To establish his claim he has not produced the said written order of appointment to disclose the terms and conditions stipulated therein. In the absence of this document, it cannot be proved that he had been given written appointment by the Railways. From the perusal of record, it becomes amply clear that the workman was given appointment of a casual labour to perform the duty of motor driver w.e.f. 31-12-85. He was working in Railway Electrification Project at Bhopal and he was a project casual labour. In case of project casual labour, the Supreme Court in writ petition No. SC-147, 320-69, 454, 4335-4434/83 etc. etc. Inderpal Yadav and others versus Union of India and others has held that the workers who completed continuous service for 360 days in the project shall be entitled to get the temporary status. The workman did not fulfill this condition as he did not complete the continuous service for 360 days as project casual labour in Railway Electrification Project. In view of this fact, he cannot acquire temporary status in the employment of management. Before terminating his services, he was not required to be served with chargesheet. He was neither required to be served with chargesheet nor any DE was required to be held before terminating him from service. He is also not entitled to compensation as claimed by him. At the same time, he was not found suitable to perform the duty of Motor driver at all. Against this order, he never made any representation to the competent authority. In view of this fact, it cannot be held that any prejudice has been caused to the workman in terminating his services w.e.f. 19-11-86. The order of termination is perfectly legal and does not require any interference. Issue No. 1 is answered accordingly.

6. Issue No. 2 : On the reasons stated above, it is held that the termination order dated 29-11-86 passed by the management against the workman is just and proper. The workman is not entitled to reinstatement with back wages. The reference is accordingly answered in favour of the management and against the workman.

7. Copy of the award be sent to the Ministry of Labour as per rules.

12-6-2001

K. M. RAI, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. आ. 1809.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल रेलवे के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/25/94-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1809.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41012/25/94-IR-(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/107/95

PRESENT :

Presiding Officer : Shri K. M. RAI

Shri Girdhari Prasad Tripathi,
S/o Late Ayodhya Prasad,
Fireman, Loco Foreman,
Central Railway,
Satna.

Applicant.

Versus

The Divisional Railway Manager,
Central Railway,
Jabalpur.

Non-applicant.

AWARD

Passed on this 13th day of June 2001

1. The Government of India, Ministry of Labour vide order No. L-41012/25/94-IRBI dated 1-6-95 has referred the following dispute for adjudication by this tribunal—

"Whether the action of the management of Central Railway, Jabalpur in removing the workman Shri Girdhari Prasad Tripathi from service w.e.f. 12-1-92 treating him to be unfit on medical examination of his eyes is correct? If not, what relief the workman is entitled to?"

2. The case for the workman is that while performing his duty as a Hind Fireman, Central Railway, Satna he suddenly fell sick on 14-6-91. He was medically examined by the Medical Superintendent, Central Railway, Jabalpur who declared fit on 26-11-91. On the basis of this fitness certificate, the Senior Divisional Medical Officer, Satna declared him fit to join his duty on 28-11-91. The management has failed to make payment of wages w.e.f. 14-6-91 to 28-11-91 which is illegal in view of the medical rule-520 (Clause II).

3. The workman further alleges that while performing his duty on 19-11-91, he received a message from Loco foreman, Satna to report himself to the Medical Superintendent, Jabalpur for necessary medical examination. In view

of this letter he reported to the Medical Superintendent, Jabalpur on 7-11-92 and after Medical examination by him, he was declared fit on 7-1-92 and advised to report to his duty at Satna. Thereafter again as per instruction of Medical Superintendent Jabalpur, he reported himself for further medical examination on 10-1-92 and after medical examination he was declared fit and certificate in this regard was issued to him on 11-1-92. On this very day he was informed by the Loco Foreman Satna that he was under the sick leave but no letter in this regard was given to him. He was a patient of eye cataract since 1988 and was advised for medical examination during 1989. The medical Superintendent, Jabalpur examined him and declared him fit. As per direction of medical superintendent he was examined in 1990 and passed in A-I category without glasses. The Medical Authorities of Jabalpur division declared the workman unfit for any job while the CHS Bombay declared him fit on A-I without glasses on 23-3-93. Again he was examined by CHS Bombay on 19-4-93 and was declared fit in A-I with glasses vide his letter dated 27-4-93. This certificate of fitness issued by the CHS Bombay has been declared to be forged one by the Chief Medical Superintendent Jabalpur which is not just and proper. The management has illegally not permitted him to perform his duty w.e.f. 12-1-92. He is therefore entitled to be allowed to resume his duty by the management and the period of absence should be treated as a period spent on duty. The monetary benefits also should be allowed.

4. The case for the management is that the applicant in case No. OA 652/92 has claimed the relief that the respondents be directed to allow the applicant to continue in service as usual and pay all arrears of pay and other emoluments. The case of the respondents/non-applicant therein was that the Applicant was directed for special Medical Examination vide CMS Jabalpur letter dated 6-9-91. However the applicant took a decision on his own not to undergo the special Medical Examination. Since the CMS Jabalpur letter dated 1-1-92 had clearly mentioned that the applicant is not fit to work as a fireman, he was not allowed to discharge the duties as fireman.

5. The Central Administrative Tribunal disposed off the petition of workman and the observations of the tribunal are reproduced as under :—

"Consequently the conclusion is inevitable that unless the applicant presents himself before the Chief Medical Superintendent, Jabalpur and obtains fitness certificate for category A-I or any other category he cannot be allowed to resume duties. It is in the own interest of the applicant that he presents himself before the Chief Medical Superintendent, Jabalpur, the intervening period, on the basis of his application, may be treated as leave due, leave without pay as the case may be, in accordance with the rules and thereafter absorbed in an alternative job if found unfit for category A-I job."

6. The management further alleges that in the light of directions given by CAT Jabalpur, the workman failed to report to the Chief Medical Superintendent, Central Railway, Jabalpur for special Medical Examination and therefore he is not entitled to any relief as claimed by him.

7. The following issues arise in this case and the findings thereon are noted hereinafter :—

1. Whether the management illegally not permitted the workman to discharge his duty w.e.f. 12-1-90?

2. Relief and costs?

8. Issue No. 1 : Admittedly the workman was serving as fireman under the Railway Administration at Satna and during the course of his employment he fell sick on 14-6-91 and resumed duty only on 29-11-91. He performed his duty as such till 11-1-92 and thereafter he was not allowed to perform his duty as fireman. The workman challenged this order before the CAT Jabalpur by petition No. OA 652 of 1992. The Central Administrative Tribunal disposed off the workman's petition of 10-2-93. The CAT has clearly held that the applicant belongs to safety category staff and 2204 GI/2001—5

since he was suffering from cataract on both the eyes, special treatment was required to be meted out. The applicant was directed for special medical examination by the Chief Medical Superintendent, Jabalpur vide letter dated 6-9-91. The Chief Medical Superintendent, after examination, confirmed that the workman was suffering from cataract on both eyes vide his letter dated 1-1-92. The workman did not present himself before the Chief Medical Superintendent for special medical examination. The Chief medical superintendent clearly mentioned in his letter dated 1-1-92 that the workman was not fit to perform the duty of fireman and therefore he was not allowed to discharge the duty of fireman by the management unless the workman present himself before the Chief Medical Superintendent for special medical examination and obtain fitness certificate for category A-I or any other category, he cannot be allowed to resume his duty. Taking the entire facts into consideration, the CAT held that in case the applicant presents himself before the Chief Medical Superintendent the intervening period, on the basis of his application, may be treated as leave due, leave without pay as the case may be, in accordance with the rules and thereafter absorbed in an alternative job if found unfit for category A-I job.

9. In view of the above said directions of the CAT. It appears that the workman had already moved the said tribunal for granting relief in the present dispute, referred before this tribunal, and he was directed to present himself before the Chief Medical Superintendent, Central Railway, Jabalpur for special medical examination and to obtain certificate of fitness to permit him to perform his duty. After the clear direction, the workman has failed to comply with the same so far. The whole matter has already been disposed off by the CAT and therefore I do not find anything to add any more in this connection. I agree with the direction of CAT. It is held that the workman shall present himself before the Chief Medical Superintendent, Central Railway, Jabalpur for special Medical Examination and the intervening period on the basis of his application may be treated on leave due to him/leave without pay as the case may be in accordance with the rules and thereafter he be absorbed in an alternative job if found unfit for category A-I job. Issue No. 1 is decided accordingly.

10. Issue No. 2 : In view of my finding given on issue No. 1, it is hereby ordered that the workman shall present himself before the Chief Medical Superintendent, Central Railway, Jabalpur for special medical examination within the period of 3 months and the intervening period on the basis of his application, he may be treated on leave due to him or leave without pay as the case may be in accordance with the rules and thereafter he be absorbed in an alternative job by the management if found unfit for category A-I job. He should also be paid back wages as per rules.

11. Copy of the award be sent to the Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. भा. 1810.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार नोबल रेलवे के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निम्नलिखित प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण श्रम न्यायालय लखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/36/99-आई आर (बी-1)]

अजय कुमार, हेड अधिकारी

New Delhi, the 4th July, 2001

S.O. 1810.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41012/36/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Presiding Officer : Rudresh Kumar.

ADJUDICATION

I.D. 132/2000

BETWEEN

Sunder Lal Tewari,
S/o Sri Shobanath Tewari,
Vill. & Post : Bhagvant Nagar,
Distt. Unnao (U.P.)

AND

The Divisional Railway Manager,
Northern Railway,
Moradabad.

AWARD

By reference No. L-41012/36/99-IR(B-I) dated 11-5-99, the Central Government, in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the I.D. Act, 1947 (14 of 1947) made over this industrial dispute between Sunder Lal Tewari and Divisional Railway Manager, Northern Railway, Moradabad for adjudication, to the CGIT-cum-Labour Court, Kanpur and later, transferred the case to this Tribunal.

The reference is re-produced as under :

"Whether the action of Management of Northern Railway in not allowing Sunder Lal Tewari, on duty w.e.f. 4-4-1995 is legal and justified? If not what relief the workman is entitled to?"

2. The cryptic reference whether action of management of Northern Railway not allowing Sunder Lal Tewari, on duty w.e.f. 4-4-95 is legal and justified, requires scrutiny of entire facts and circumstances which did not permit management of the Northern Railway to allow workman to resume duty and also requires determination of legal status of the workman who admittedly remained absent for more than 5 years, without submitting any application to sanction leave and regularise the service. The totality of facts and circumstances constituting such a long absence from service, on the part of the workman, in absence of termination order, whether may be taken to be legal abandonment of service?

3. Coming to the facts, the case of the workman, Sunder Lal Tewari, is that he was appointed as gangman on 10-5-89 in the scale of 775-1025 in quota of ex-servicemen. Prior to this appointment, he was in Army and retired in December, 1987. He was called to represent Moradabad Division of Northern Railway in Volleyball competitions to be held from 4-10-89 to 6-10-89 at New Delhi. Special casual leave from 3-10-89 to 7-10-89 was sanctioned and he was relieved on 2-10-89 to participate in the tournament. After participating in the tournament, he fell ill and remained under treatment as private sick from 8-10-89 to 28-10-94. His illness forced him not to return to duty, unless declared fit. He informed his illness to the authorities from time to time. On getting fit, he approached the Section Engineer, Northern Railway, Sahapur, district, Unnao, seeking permission to join duty. However, he was not permitted to join and his case was referred to Asstt. Engineer, Northern Railway, Sitapur city. Asstn. he was directed to obtain fitness certificate from the Railway Medical Officer. He could obtain fitness certificate from the Railway Medical Officer, Unnao (certificate No. 741732 dated 3-4-95) and submitted his fitness certificate to the authorities. Despite his fitness he was not allowed to join duties on one pretext or the other. Finally, this industrial dispute was raised.

4. The workman further claims, non-issuance of any notice or holding any inquiry, and also no payment of retrenchment compensation etc. Thus, the management acted in mala fide manner and committed breach of section 25-F, 25-G, 25-H of the I.D. Act, 1947.

5. The management has not denied temporary appointment of the workman under the Ex-servicemen quota and his joining on 10-5-89. His relieving on 2-10-89 to participate in Volleyball tournament representing the Moradabad Division of Northern Railway, is also not denied. However, it is pleaded by the management that Sunder Lal Tewari absented from Delhi and did not submit participation certificate, and so, was treated absence w.e.f. 4-10-89. He reported to join duty after more than five years without lawful authority or medical certificate from an authorised medical officer. His abscondance for more than 5 years coupled with his habit of absents, clearly demonstrate his unwillingness to be in service. Details of absence from the date of his appointment, is given below to fortify submission that the workman abandoned his service.

6. The Asstt. Divisional Engineer, Sitapur, in his affidavit has detailed, unauthorised absence period since the appointment of the workman on 10-5-89 as follows :

17-6-89 to 19-6-89	=	03 days
18-7-89 to 28-7-89	=	11 days
29-7-89 to 28-8-89	=	31 days
29-8-89 to 6-9-89	=	09 days
4-10-89 to 4-1-95	=	5 years 93 days

5 years + 147 days

In addition to above unauthorised absence, the workman remained on authorised leave as under :

10-6-89 to 13-6-89	=	04 days	Leave on Average Pay
14-6-89 to 16-6-89	=	03 days	-do-
7-9-89 to 21-9-89	=	15 days	-do-
22-9-89 to 26-9-89	=	5 days	= 10 days commuted leave
		27 days	

7. It is pertinent to note that the workman joined as temporary Gangman on 10-5-89. He worked for 85 days, in all since appointment as under :

10-5-89 to 13-6-89	=	35 days
20-6-89 to 17-7-89	=	28 days
7-9-89 to 21-9-89	=	15 days
27-9-89 to 3-10-89	=	07 days
		85 days

8. Above facts are not denied by the workman, that he worked for 85 days only and remained absent from duty on authorised leave for 27 days and unauthorised leave for 5 years 147 days. The workman has not mentioned in his claim statement, to have submitted any leave application to regularise unauthorised absence period but seeks joining on the basis of fitness certificate of a local vaidya. In absence of regularisation of services for more than five years, the management could not have permitted the workman to join though found fit, under the service rules. The workman did not explain as what persuaded the workman not to apply for leave but simply to inform about the illness?

9. Under the 'Leave Rules and Joining Time', applicable to the railway servants, the workman was entitled to leave on half average pay, commuted leave, 'leave not due' and extra ordinary leave. The workman had already exhausted his 'leave on average pay' and 'commuted leave'. 'Leave not due' is granted to permanent railway servants. However, in extra ordinary circumstances, such leave may be granted also to temporary servant with one year service, for a period not exceeding 30 days during the entire service, on medical grounds for suffering TB, Leprosy, Cancer or mental illness. The workman was a temporary railway servant but had not completed one year service, nor was suffering with any of the diseases mentioned above. So, he was not entitled to 'leave not due'. Extra ordinary leave may be granted in special circumstances when no leave is admissible. In case of the temporary railways servant, such leave, may be granted under the exceptional circumstances by the President for 3 months on medical certificate. There are no materials on records to justify inference, that the workman was entitled to any type of unavailed leave. It was conceded that the workman had not applied for any type of leave so far and his absence period remained unregularised.

10. Let it be examined whether the workman was serious with his employment. He joined on 10-5-89 and in total worked for 85 days only. Details of this absence was given earlier. He absented continuously, from 4-10-89 to 4-1-95. The workman was not at a place far off from Unnao. Medical certificate filed by him does not show nature of the illness. The workman was not confined to bed and so, was able to contact the railway doctor, locally. The materials on record do not justify inference that he was ever, serious, in seeking leave for the period. A Railway Medical Officer was available there but the workman chose not to present himself before the authorised medical officer. Even in this adjudication, he seeks duty, without explaining the nature of illness, though he remained absent for more than five years.

11. The workman claims to have kept informed the authorities about his illness and places reliance on letter of Asstt. Divisional Engineer dated 19-12-95 addressed to Divisional Railway Manager. This letter mentions that after 4-10-89 the workman was continuously absent despite notices issued to him to join duty. However he informed that he would join when became fit. On receiving the notices, the workman did not obtain certificate from any authorised medical officer and submitted to justify that illness was genuine. Treatment chart and cash memo of medicines, have also not been filed. The management's plea that the workman was not ill and his certificate is false, appears to be correct.

12. In any event, the circumstances from the date of joining justify inference that the workman was never a willing worker. He was absent at his will, being fully aware of there being no leave to his credit. He did not file participation certificate from the manager of the Volleyball team, left for home without obtaining permission of the competent authority or the Manager of the team, remained continuously absent for more than five years, and till date, did not file evidence to justify genuineness of his illness, save a fitness certificate of village vaidya. All these facts cumulatively establish that he abandoned the service. He was a temporary railway servant and was not even a probationer.

13. In Lakshmi Kant V/s. PO, CGIT, Gurgaon and others (1999) I-LJJ page 224, the Punjab High Court held that the Labour Court is not only entitled to adjudicate upon the points of dispute but also on matter incidental thereto. In the present case, no doubt the reference is regarding, legality of the action of the management not to permit the workman to join but incidentally, matter is whether the workman is entitled to join by remaining absent more than 5 years continuously and in totality of facts whether he abandoned the service? In such case, formal enquiry is not needed. The management has not terminated services of the workman, but he abandoned the service as is established on facts and circumstances. In Dharmraj Vithoba Natekar V/s. Unique Industries & Others (1996) I-LJJ 948, the High Court of Bombay held as under:

"By now, it is well established, that abandonment of service is an inference which can be raised upon consideration of the totality of circumstances and the court should raise this inference only if it is satisfied that the circumstances do indicate that the

workman was clearly not interested in continuing with his service."

14. In B.V. Ramnarayan Vs. State Bank of India, Hyderabad & Others (1997) 1-LJJ 1007, the High Court of Andhra Pradesh held: that in the event of abandonment of job voluntarily by an employee, the contract of service comes to an end. In order to constitute abandonment, there must be total giving up of duties to indicate an intention not to resume the same.

15. In the present case, the workman abruptly left the team at Delhi without permission of the Manager, he did not inform the authorities immediately thereafter explaining reasons therefor, he remained absent continuously for more than 5 years, he did not obtain certificate from the authorised medical officer, and he did not apply for leave despite notices to join his duty. All these circumstances justify inference that he was not interested in joining his duty. As observed earlier, his medical certificate from a village vaidya, does not indicate genuineness of his plea of illness.

16. Accordingly, the only inference is that the workman abandoned his service and contract of his service came to an end. In such circumstances the provision of Section 25-F, 25-H and 25-G do not apply.

17. The action of the management not permitting the workman to join duty is legal and justified. The workman is not entitled to any relief.

18. Award as above.

Lucknow:

5-3-2001

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. प्र. 1811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, कोटा के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/60/87-डी-II (बी)/आई प्रार (बीI)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1811.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway Kota and their workman, which was received by the Central Government on 3-4-2001.

[No. L-41012/60/87-D-II(B)|IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, JAIPUR

CASE NO. CGIT-65/2000

Reference No. L-41012/60/87-D-II(B) dt. 14-12-88

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Kota.

Applicant.

Vs.

The Divisional Railway Manager,
Western Railway,
Kota.

Non-applicant.

ATTENDANCE :

For the applicant : Shri A. D. Grower.

For the non-applicant : Shri Tej Prakash Sharma.

Date of Award : 13-6-2001.

AWARD

The Central Government has referred the following dispute for adjudication under clause (d) of sub-section (1) and sub-section (2) A of the Industrial Disputes Act, 1947 (hereinafter referred as the Act, 1947) vide order mentioned above. The reference was referred to CGIT, New Delhi, but later on transferred vide order No. L-41012/b0/87-IRB1 dt. 28-8-2000 to this Tribunal by withdrawing the same from CGIT, New Delhi.

SCHEDULE

"Whether the action of D.S.T.E. (Cons) Western Railway Kota in withdrawing the temporary status of Shri Jagdish Prasad S/o Shri Jagdev w.e.f. 20-2-87 and also terminating his service w.e.f. 5-3-87 are justified? If not, to what relief the workman is entitled to and from what date?"

The applicant filed the statement of claim stating that he was engaged as casual labour by Chief Signal Inspector (C) Kota (agent of the non-applicant) and was granted temporary status vide order dt. 31-12-86. The temporary status granted to him was withdrawn by order dt. 20-2-87 by Assistant Signal and Telecom Engg. (C) Kota who was not the competent authority, on the ground that the service card submitted by him was found to be false. Before withdrawing the temporary status no opportunity of hearing was given to him. Subsequently, his services were terminated vide order dt. 4-3-87 w.e.f. 5-3-87 in violation of Section 25F of the Act, 1947. It was prayed that the non-applicant may be directed to restore the temporary status and reinstate him in service with full back wages and other consequential benefits.

The non-applicant in the reply admitted that the applicant was granted temporary status which was withdrawn on the basis that the applicant obtained the employment on the basis of false service card. It was further stated that the service of the applicant was terminated on the ground of misconduct and hence provisions of Section 25F of the Act, 1947 are not attracted. The applicant was also directed to receive his dues on 6-3-87. The applicant failed to receive the payment of settlement. The applicant, however was again taken on duty.

The applicant filed rejoinder to the reply reiterating the facts mentioned in the statement of claim.

On behalf of the non-applicant affidavit of Shri Ramdaur, Shri Rampal Verma and Shri M. P. Shrivastava were filed. However, Shri Ramdaur and Shri Rampal Verma were not produced for cross-examination and therefore, their affidavits have to be ignored. The learned representative of the applicant was given opportunity to cross-examine Shri M. P. Shrivastava. On behalf of the applicant affidavit of the applicant was filed. The non applicant was given opportunity to cross examine him on his affidavit. Apart from above both parties filed certain documents, which will be referred, at the appropriate place.

Heard arguments on behalf of both the parties. The parties have also filed written arguments, which are on the record.

It is not disputed that the applicant was granted temporary status vide order dt. 31-12-86 on having completed 360 days service. It is also not disputed that temporary status granted to the applicant was withdrawn vide letter dt. 20-2-87. The learned representative of the applicant has contended that opportunity of hearing was not given to the applicant before withdrawing the temporary status. On the other hand the learned counsel for the non-applicant has contended that the temporary status granted to the applicant was provisional and

the service card of the applicant having being found forged the temporary status was withdrawn and the applicant was given opportunity to submit the explanation if any. It is not disputed that the temporary status granted to the applicant was provisional, Para-2 of the order vide which temporary status was granted reads as under :—

"Provisionally with the condition that candidates should pass the prescribed medical examination and their casual labour service cards are completed and verified by competent authority within a months from the date of issue of this office order, failing which the benefit of temporary status will be cancelled and recoveries made accordingly.

The letter dt. 20-2-87 (Marked M-W-6) vide which the temporary status was withdrawn states that the temporary status granted to you vide this office letter referred above provisionally is hereby cancelled with immediate effect for the reasons that the casual labour service card No. 056141 issued by PWI Bhawani Mandi which was submitted by you at the time of your initial recruitment under CSI (C) Kota has been proved to be false. This tantamount to serious misconduct on your part. You are directed to submit to the undersigned a written statement if any within period of 10 days if you have to say anything on the subject."

It is evident from the above letter that the order of granting the temporary status to the applicant was cancelled without giving any opportunity of hearing to the applicant thus violating the principles of natural justice.

It is also not disputed that the applicants' service were terminated vide letter dt. 4-3-87 w.e.f. 5-3-87. The letter dt. 4-3-87 marked M-W-7 is being reproduced hereunder :—

"To,

Shri Jagdish Prasad, S/o Jagdev,
Vill—Vhadana-ki Tapri,
Rangpur Road,
Kota (Rajasthan).

Sub : Project casual labour—terms off employment of—
Ref : This Office letter of even No. dt. 20-2-87.

Regarding submission of the false casual labour service card by you and the time of recruitment, you were asked to submit your reply in this regard within 10 days from the date of Receipt of the said letter.

Despite lapse of the 10 days, no reply has been received from you till date and as such it is evident that you have deceived the Railway Administration.

In view of the above your services are hereby terminated with effect from 5-3-87.

You should present yourself to receive your dues on the date of termination i.e. 6-3-87.

Sd/-

Divisional Signal & Telecom Engg.
(Construction)
Western Railway, Kota."

As per rule 2005 of the Indian Railways Establishment Manual the casual labour on grant of temporary status has the rights and privileges admissible to temporary Railways servants including the Discipline and Appeal Rules. It is admitted that no charge sheet was issued to the applicant for submitting false service card. His services could not be terminated without making any enquiry under the Discipline and Appeal Rules, 1968 for submitting the false casual labour service card. If the order of termination is taken to be simplicitor his service could not have been terminated without giving one month's prior notice or pay in lieu of notice and compensation as provided under Section 25F of the Act, 1947 as the applicant had already served continuously from 6-4-85 to 5-3-87 before termination of his service. Mentioning in the order of termination that the applicant may collect his dues on the next date of termination does not fulfil the

requirement of Section 25-F of the Act, 1947 as no amount was disclosed in the order of termination.

On the basis of the above discussion the order of withdrawing the temporary status of the applicant vide order dt. 20-2-87 and termination of services of the applicant by the non-applicant w.e.f. 5-3-87 is held to be illegal and unjustified. The applicant having already been taken in service he will be entitled to back wages which he was drawing at the time of termination of his service with continuity in service.

The copies of the award may be sent to the Central Government under Section 17(1) of the Act, 1947 for publication.

Sd/- Illegible
Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. मा. 1812.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, कोटा के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अप न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/148/89-डी-2 (बी)/आई आर
(बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Jaipur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railways, Kota and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41012/148/89-D-2(B)|IR-(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JAIPUR

Case No. CGIT-73/2000

Reference No. 41012/148/89-D-2(B) dt. 2-9-90

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Kota ... Applicant.

V/s.

The Divisional Railway Manager,
Western Railway,
Kota ... Non-applicant.

ATTENDANCE

For the applicant : Shri A. D. Grower.

For the non-applicant : Shri Tej Prakash Sharma.

Date of Award : 13-6-2001.

AWARD

The Central Government has referred the following dispute for adjudication under clause (d) of sub-section (1) and sub-section (2)A of the Industrial Disputes Act, 1947 hereinafter referred as the Act, 1947) vide order mentioned

above. The reference was referred to CGIT, New Delhi, but later on transferred vide order No. L-41012/148/89-IRBI dt. 28-8-2000 to this Tribunal by withdrawing the same from CGIT, New Delhi.

SCHEDULE

"Whether the action of the Divisional Signal and Telecom Engineer (C) Western Railway, Kota is justified in terminating the services of Shri Keli Ram S/o Shri Karan Singh, casual Khallasi w.e.f. 5-3-87 is justified? If not, to what relief the workman is entitled to?"

The applicant filed the statement of claim stating that he was engaged as casual labour by the Chief Telecom Inspector (C), Kota (agent of the non-applicant) and granted temporary status vide order dt. 31-12-86. Subsequently, the temporary status granted was withdrawn vide office order dt. 20-2-87 by the Assistant Signal and Telecom Engg. (C), Kota, who was not his employer. His services were subsequently terminated vide order dt. 4-3-87 w.e.f. 5-3-87 without complying the provisions of sec. 25-F of the Act, 1947. However, he was taken back on duty after a period of about 17 months vide letter dt. 16-9-88 on the same status and last pay drawn. It was prayed that the non-applicant may be directed to treat him in service from the date of his illegal termination with continuity of service and back wages.

The non-applicant in reply to the claim has admitted that the applicant was granted temporary status which was withdrawn as per condition stipulated in Para 2 of the order vide which the temporary status was granted. It was further stated that there was complete ban on engagement of casual labourers in Railways after 14-7-81. The applicant presented his old service card and stated that he had worked earlier in the Railway as casual labour. On that basis he was engaged as casual labour in project work. As per judgment of the Apex Court in the case Inderpal Yadav v/s. Union of India the project casual labour was also entitled for grant of temporary status, as per the scheme submitted by the Railway Board and approved by the judgment of the Apex Court dt. 18-4-85 and 11-8-86. The Board issued the orders in this regard vide letter dt. 11-9-86. In pursuance of the Railway Board's orders the non-applicant granted temporary status to all the casual labourers including the applicant on provisional basis. On verification the service card of the applicant was found forged and, therefore, the temporary status was withdrawn. The applicant, however, was given opportunity to make representation if any within a period of 10 days. The applicant did not submit any explanation but left the service at his own w.e.f. 3-3-87. Subsequently, the service of the applicant was terminated, as he was found guilty of proved serious mis-conduct by obtaining employment fraudulently.

The applicant filed rejoinder to the reply reiterating the facts mentioned in the statement of claim.

On behalf of the non-applicant affidavit of Shri Ramdaur, Shri Rampal Verma and Shri M.P. Shrivastava were filed. However, Shri Ramdaur and Shri Rampal Verma were not produced for cross-examination and therefore, their affidavits have to be ignored. The learned representative of the applicant was given opportunity to cross examination Shri M.P. Shrivastava. In the form of documentary evidence letter marked M-1, copy of service card (M1/2), copy of order for grant of temporary status (M1/3), copy of letter dt. 16-1-87 (M-1/4), copy of letter for withdrawing temporary status (M1/5) and copy of attendance register (M 1/6) were filed. On behalf of the applicant affidavit of the applicant was filed. The non-applicant was given opportunity to cross examine him on his affidavit. The applicant also filed copy of notice (marked W-1), copy of order (marked W-2) and copy of letter (marked W-3).

Heard arguments of the learned representative of the applicant and advocate for the non-applicant. Both the parties had also filed written arguments which are on the record.

It is not disputed that the applicant was granted temporary status vide order dated 31-12-86 on having completed 360 days service. It is also not disputed that temporary status granted to the applicant was withdrawn vide letter dated 20-2-87. The learned representative of the applicant has

contended that opportunity of hearing was not given to the applicant before withdrawing the temporary status. On the other hand the learned counsel for the non-applicant has contended that the temporary status granted to the applicant was provisional and the service card of the applicant having being found forged the temporary status was withdrawn and the applicant was given opportunity to submit the explanation if any. It is not disputed that the temporary status granted to the applicant was provisional, Para-2 of the order vide which temporary status was granted reads as under:—

"Provisionally with the condition that candidates should pass the prescribed medical examination and their casual labour service cards are completed and verified by competent authority within a months from the date of issue of this office order, failing which the benefit of temporary status will be cancelled and recoveries made accordingly."

The letter dated 20-2-87 (marked M1/5) vide which the temporary status was withdrawn states that "the temporary status granted to you vide this office letter referred above provisionally is hereby cancelled with immediate effect for the reasons that the casual labour service card No. 42 issued by PWI (C) KTT which was submitted by you at the time of your initial recruitment under CSI (C) Kota has been proved to be false. This tantamount to serious misconduct on your part. You are directed to submit to the undersigned a written statement if any within period of 10 days if you have to say anything on the subject."

It is evident from the above letter that the order of granting the temporary status to the applicant was cancelled without giving any opportunity or hearing to the applicant thus violating the principles of natural justice.

It is also not disputed that the applicants' service were terminated vide letter dated 4-3-87 w.e.f. 3-3-87. The letter dated 4-3-87 marked W-2 is being reproduced hereunder:—

"To,

Shri Keli Ram, S/o Shri Karan Singh,
Village Nagla, P.O. Band Baretha,
Bayana, Distt. Bharatpur.

Sub : Project casual labour—terms of employment of—
Ref : This Office letter of even No. dt. 20-2-87

Regarding submission of the false casual labour service card by you and the time of recruitment, you were asked to submit your reply in this regard within 10 days from the date of Receipt of the said letter.

Despite lapse of the 10 days, no reply has been received from you till date and as such it is evident that you have deceived the Railway Administration.

In view of the above, your services are hereby terminated with effect from 5-3-87 (A/N).

You should present yourself to receive your dues on the date of termination i.e. 6-3-87.

Sd/-

Divisional Signal and Telecom Engg.
(Establishment/Const.)
Western Railway, Kota"

As per rule 2005 of the Indian Railway Establishment Manual the casual labour on grant of temporary status has the rights and privileges admissible to temporary Railways servants including the Discipline and Appeal Rules. It is admitted that no charge sheet was issued to the applicant for submitting false service card. His services could not be terminated without making any enquiry under the Discipline and Appeal Rules, 1968 for submitting the false casual labour service card. If the order of termination is taken to be the simplicitor his service could not have been terminated without giving one month's prior notice or pay in lieu of notice and compensation as provided under section 25 F of the Act, 1947 as the applicant had already served continuously from 3-4-85 to 5-3-87 before termination of his service. Mentioning in the order of termination that the applicant may collect his dues on the next date of termination does not fulfill the requirement of section 25-F of the Act, 1947

as no amount was disclosed in the order of termination. The contention that the applicant left service at his own cannot, also be accepted in face of the order of termination.

On the basis of the above discussion the termination of services of the applicant by the non-applicant w.e.f. 5-3-87 is held to be illegal and unjustified. The applicant having already been taken in service he will be entitled to back wages which he was drawing at the time of termination of his service with continuity in service.

The copies of the award may be sent to the Central Government under section 17(1) of the Act, 1947 for publication.

Sd/- Illegible.
Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. घा. 1813.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सार्जन रेलवे, मद्रास के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-41012/162/93-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1813.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway, Madras and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41012/162/93-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 12th June, 2001

PRESENT :

K. Karthikeyam, Presiding Officer

Industrial Dispute No. 28/2001

(Tamil Nadu State Industrial Tribunal

I.D. No. 22/2000)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri D. Suresh and the Management of Southern Railway, Madras.)

BETWEEN

D. Suresh : I Party/Workman

AND

The Deputy Chief Engineer (HQ) : II Party/Management
Construction,
Southern Railway, Madras.

APPEARANCE :

For the Workman :

Sri M. Gnanasekar & C. Premavathi, Advocates.

For the Management :

Mr. G. Kalyanasundaram, Advocate.

This dispute on coming up before me for final hearing on 31-5-2001, upon perusing the reference, Claim Statement, Counter Statement and other material papers on record, the documentary evidence let in on either side and upon hearing the arguments of learned counsel on either side this dispute having stood over till this date for consideration, this Tribunal passed the following :—

AWARD

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 22/2000. On receipt of notice from that Tribunal, both the parties entered appearance through their respective counsel and filed their respective Claim Statement and Counter Statement. When the matter was pending enquiry, before the Tamil Nadu State Industrial Tribunal, as per the orders of transfer by the Central Govt, this case has been transferred from the file of Tamil Nadu State Industrial Tribunal to the file of this Tribunal for adjudication. On receipt of records of this case from the Tamil Nadu State Industrial Tribunal, this case has been taken on file on 10-1-2001 here as I. D. No. 28/2001 and notices were sent to the counsel on either side informing them about the transfer of this case from the file of Tamil Nadu State Industrial Tribunal to the file of this Tribunal, with a direction to appear before this Court with their respective parties to prosecute this case further on 22-1-2001.

2. The industrial dispute referred to in the Schedule mentioned above reads as follows :—

“Whether the action of the Management of Southern Railway, Madras in terminating the services of Shri D. Suresh, ex-peon/lascar without holding proper enquiry on the charges levelled against him is just, proper and legal. If not, to what relief the workman is entitled?”

2. This industrial dispute has been raised by the I Party/Workman Shri D. Suresh (herein after referred to as Petitioner) challenging the order passed by the Management in terminating his services.

4. The facts of this industrial dispute in brief are as follows :—

The Petitioner was engaged as substitute Bungalow Lascar to work as a domestic servant in the

residence of Shri N. Krithivasan, Divisional Railway Manager, Headquarters office, Chennai on 19-2-90. In the appointment order, it was stated that his services will be terminated within three years if found unsatisfactory or his services are not required by the Divisional Railway Manager/MAS or his successor or any other Administrative Officer within three years. It was further stated in the appointment order that the petitioner will be eligible for regular absorption as Peon/Lascar after three years continuous service either in open line or construction provided vacancy exists and that after regular absorption, if he is not required in the bungalow due to the transfer of the office concerned or his successor, he will be transferred as Peon/Lascar only in office against existing Class IV vacancy and he will seek further arrangement along with office peon/lascar as per the existing channel of promotion. Consequent upon transfer of Sri N. Krithivasan, DRM/MAS, the petitioner was also transferred along with the officer and posted as substitute Bungalow lascar in Chief Engineer, Construction, Madras under order dated 5-2-92. The Petitioner was issued a memo dated 17-8-92 alleging six acts of misconduct. The petitioner had submitted his explanation on 21-8-92. His explanation was not accepted, since the officer under whom he was working found his service unsatisfactory. His service has been terminated by an order dated 28-8-92 with effect from 28-8-92. In that order of termination, the Petitioner was directed to collect compensation of Rs. 1,324/- and Rs. 1,986/- purported to be notice pay and compensation as per section 25(F) of Industrial Disputes Act, 1947.

5. The Petitioner has challenged in this industrial dispute, the impugned order dated 28-8-92, terminating his services as illegal arbitrary and violative of Article 311(2) of Constitution of India. When the termination of the Petitioner from service is for misconduct, it cannot be stated as retrenchment. Hence the payment of notice pay and compensation under section 25F of the Industrial Disputes Act does not arise. His termination of services is violative of principles of natural justice. It is contrary to Rule 9 of Railway Servants (Discipline and Appeal) Rules and violative of Article 311(2) of Constitution of India. The II Party/Management (hereinafter referred to as Respondent) cannot terminate the Petitioner's service for misconduct without giving reasonable opportunity and conducting an enquiry. The Respondent's action in terminating the Petitioner's service based on the certificate issued by the officer is arbitrary and violative of principles of natural justice. The termination is not a termination simpliciter, but it is by way of punishment for misconduct. The Petitioner/Workman prays that the Tribunal may be pleased to pass an award holding that the termination of service of the Petitioner with effect from 28-8-92 by the Respondent/Management is illegal and consequently to direct the Respondent to reinstate the Petitioner with all attendant and other service benefits.

6. The Respondent/Management while denying the allegations of the Petitioner in his Claim Statement has averred in their Counter Statement that the post of substitute bungalow lascar is the post

to assist the officer at his residence and it is based on the choice of the officer on whose recommendation, the candidate will be appointed and is not governed by the normal recruitment rule. The Petitioner's service in the post is purely temporary in nature and that at any time his service is liable to be terminated within three years of service, if found unsatisfactory. The Petitioner cannot invoke the provisions of Industrial Disputes Act, since the domestic service is not covered under the definition 'industry' as per section 2(j) of the amended Industrial Disputes Act. The Petitioner is not a railway employee and his service is temporary in nature and he has no right over the post, which is purely contractual in nature that could be terminated at any time in terms of the contract. The Petitioner's service was terminated as per the conditions laid down in the appointment order dated 19-2-90. The Officer under whom the Petitioner was working, found the Petitioner's performance to be unsatisfactory, the Petitioner was terminated from service with effect from 28-8-92. The Petitioner has no lien over the post as he is not a railway employee or railway servant. As per the Indian Railway Establishment Manual Rules, when a person without a lien on a permanent post under the Govt. is appointed to hold a temporary post or to officiate in a permanent post is entitled to no notice for the termination of service. Therefore, the question of issue of charge sheet and disciplinary proceedings would not arise. Even after acquisition of temporary status of bungalow peon, his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry. The Petitioner is not a regular employee of the Railways and as a domestic servant, his service in the post is purely temporary in nature. Because the Petitioner has put continuous service, it does not arise that the bungalow peon acquires temporary status. The termination of service of substitute of bungalow peon, who has acquired temporary status is not barred or illegal for want of notice before termination. In such case, he may be entitled to pay for the period of notice in lieu of notice. Even though Industrial Disputes Act is not applicable to the Petitioner, the Petitioner was paid retrenchment compensation towards notice period pay and an amount towards retrenchment compensation in accordance with Section 25F of the Industrial Disputes Act. Hence, the discharge from the service of the Petitioner is justified and he is not entitled to any relief under Industrial Disputes Act.

7. When the matter was taken up for enquiry, documents were marked by consent of counsel on either side as Ex. W1 to W7. The counsel on either side have advanced, their respective arguments.

8. The point for my consideration is—

"Whether the action of the management of Southern Railway in terminating the services of Sri D. Suresh ex-peon/lascar without holding proper enquiry on the charges levelled against him is just, proper and legal? If not to what relief the workman is entitled?"

Point :—

It is admitted that the Petitioner workman was appointed by an order dated 19-2-90 as substitute bungalow lascar. The typed copy of that appointment order is Ex. W1. In that order itself, it is stated that the petitioner was appointed as substitute bungalow lascar in the bungalow of Sri N. Krithivasan, DRM/MAS, subject to three conditions mentioned therein. The first condition is that his service will be terminated within three years, if found unsatisfactory or his services are not required by DRM/MAS or his successor or any other administrative officer within three years. It is also admitted that consequent on the transfer of Sri N. Krithivasan, DRM as Chief Engineer, Construction, Madras, the Petitioner was also transferred and posted as substitute bungalow lascar to the Chief Engineer, Construction, Madras as per office order dated 5-2-92. That typed copy of office order is Ex. W2. It is also admitted on the report of the officer under whom the petitioner was working as substitute Bungalow lascar had reported several instances of the petitioner's misconduct and on that basis, the petitioner was issued a show cause notice with a direction to submit his explanation within seven days from the date of receipt of that notice. The typed copy of show cause notice issued to the petitioner is Ex. W3. The Petitioner has submitted his explanation dated 21-8-92 for that show cause notice. The typed copy of the same is Ex. W4. Subsequent to the explanation of the Petitioner, an order dated 28-8-92 was passed stating that the explanation submitted by the Petitioner is not satisfactory. The Officer under whom he was engaged as substitute bungalow lascar has certified that his integrity is doubtful and he is disobedient. The typed copy of that order is Ex. W5. The note dated 14-8-92 sent by the officer under whom the petitioner was working, in respect of the misconduct of the Petitioner (xerox copy) is Ex. W6. Ex. W7 is the xerox copy of the office note dated 27-8-92 whereby the explanation submitted by the Petitioner under his letter dated 21-8-92 was put up for the perusal of the officer under whom he is working. In that office note itself the concerned officer has passed his remarks dated 28-8-92 stating that he considers that "it is not desired to continue his service any further and his services should be terminated with effect from afternoon of 28-8-1992, duly giving him necessary compensation due". He has further observed in his note that "he does not consider his request to transfer the Petitioner to other officer as indicated by him in his letter, in view of lack of integrity and misconduct."

9. The learned counsel for the petitioner would contend that the termination of the service of the Petitioner is a violation of principles of natural justice, since the petitioner was not given any opportunity nor any enquiry to prove the charges and that the termination order was issued based on the certificate issued by the Respondent certifying that the Petitioner's integrity is doubtful. The learned counsel would further contend that the order of dismissal issued on 28-8-92 is not an order of simplicitor but by way of punishment for specific misconduct and hence the same is bad as there was no enquiry conducted by the Respondent to prove the

allegation levelled against him particularly when the Respondent issues show cause notice on 17-8-1992 and the Petitioner submitted his explanation on 21-8-1992. It is his further argument that the Petitioner's services were terminated on the strength of the certificate issued by the officer. So it is not open to the Respondent to contend that the petitioner is not a workman and he cannot invoke the provisions of Industrial Disputes Act, 1947. He relied upon a decision of Supreme Court reported as AIR 1964 SC 737. The Supreme Court has held in that case that "mali engaged to look after the garden of a bungalow belonging to Spinning and Weaving Mills should be treated as a person employed in the industry" and he would further argue that in Bangalore Water Supply and Sewerage Board case reported as 1978 AIR SC 459 wherein it is held by the Supreme Court that "Railway establishment would be an industry" and therefore, the observation referred to in that case will be applicable to the present petitioner's case. The learned counsel for the Respondent/Management would contend that the post of Bungalow Lascar Peon is the post to do domestic service/work in the residence of the officer. It is a post of choice of the officer on whose recommendation that candidate will be appointed and they are not appointed through Railway Recruitment Board or service commission or any other agencies and their services are purely contractual in nature and that bungalow lascar post is not governed by normal recruitment rules. As the service of the petitioner, is contractual in nature and at any time he is liable to be discharged from duty within three years of service, if found unsatisfactory, as per Ex. W1, the appointment order, and that the Petitioner cannot be considered for regular employment in Railways, he cannot claim that his termination of service is bad or illegal for want of notice before termination. He relied on a case reported as (1980) 3 SCC 428 ONGC Vs. Mohamed S. Iskander Ali, wherein the SC was pleased to hold that "it is a well settled by long course of decisions by this Court that in the case of a probationer or a temporary employee who has no right to the post, such a termination of service is valid and does not attract the provisions of Article 311 of the Constitution of India." He has also further argued that in a case decided by Supreme Court reported as 1985 (II) LLJ 521 it was held that "on over all appreciation if an officer under probation is found unsuitable for being confirmed in service, no opportunity of hearing is necessary before termination of his service." Therefore, the termination of the petitioner is justified. He has also relied upon a decision of the Principle Bench of Central Administrative Tribunal, Delhi, wherein it has observed that "after acquisition of temporary status by a bungalow peon, his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry." Therefore, in the case of the Petitioner no departmental enquiry is required since he has no right to the post. He has also relied upon the decisions of Supreme Court reported as (1997) 8 SCC 461, (1997) 11 SCC 521, wherein the Supreme Court was pleased to hold "that termination of service of probationer without notice and without assigning any cause in terms of appointment letter and in accordance with service regulation is upheld and that such termination of probationer's service does not amount to retrenchment

within the meaning of Section 2(oo) of Industrial Disputes Act, attracting Section 25(f) thereof." Here in this case the service of the petitioner is contractual in nature and could be terminated without assigning any reason but he was paid retrenchment compensation, even though Section 25F is not attracted. As per the later cited Supreme Court case temporary appointment for the specific period, wherein there is an enabling provision for the employer in terms of the appointment to terminate the service of workmen at any stage without assigning any reason and the termination is effected even before the expiry of the specified period, did not amount to retrenchment and will not attract section 25F and 25G of the Industrial Disputes Act. He has also contended that the learned counsel for the petitioner's reliance on Supreme Court judgement reported as (1984) 11 SCC 369 will not be applicable to the present facts of this case. Because, in that case the workman was appointed as probationer in a permanent post under UPSC recruitment and was discharged under Rule 12(b) IPS (Probationer Rule), 1954 and hence the Supreme Court was pleased to hold that the impugned order amounted to termination of service by way of punishment and in the absence of any enquiry, in accordance with Article 311(2) was liable to be strucked down. But in the present case, the petitioner/workman was only bungalow lascar and there is no specific rule for appointment of bungalow lascar and the post is not a permanent post but contractual in nature and the Petitioner was not removed by way of punishment but he was discharged from service, since his services were found to be unsatisfactory.

10. From the above arguments put forth by the learned counsel on either side and from the perusal of the documents filed in this case as Ex. W1 to W7, it is seen that the arguments advanced by learned counsel for the Management is plausible and acceptable. From the materials available in this case, it is seen that the Petitioner workman was appointed as a substitute bungalow lascar at the choice and the recommendation by the officer under whom he was taken for service for doing the domestic work in the bungalow of the officer and he has not been appointed through Railway Board or service commission or any other agency. The terms of his appointment order Ex. W1 clearly shows that it is only contractual in nature and the post is not governed by normal recruitment rules and he is liable to be discharged from service within three years, if found unsatisfactory. As it has been decided by the Principal Bench of Central Administrative Tribunal, Delhi which was also relied upon by the learned counsel for the Respondent/Management in his argument, the bungalow peon is not a railway employee and his services being purely contractual in nature could be terminated at any time in terms of the contract, if found unsatisfactory. So, the Petitioner/Workman was not a railway employee and he has no right over the post, since his service is on contractual basis, temporary in nature, liable to be terminated as per the terms mentioned in the appointment order. So under such circumstances, as correctly put forth by the learned counsel for the Respondent/Management that the action taken by the Management in terminating the services of the Petitioner without any notice, on the ground that the Petitioner's integrity was under doubt and his service

was unsatisfactory, is not bad or illegal. The decisions of the Supreme Court relied upon by the learned counsel for Respondent/Management are quite applicable to the facts of this case. So under such circumstances, the argument put forth by the learned counsel for the Petitioner that the order of termination issued to the petitioner on 28-8-92 is not an order of termination simpliciter but by way of punishment for a specific misconduct and it is bad for want of enquiry conducted by the Respondent to prove the allegations levelled against the Petitioner mentioned in the show cause notice cannot be accepted as correct. As stated by the learned counsel for the Respondent/Management in his argument that the decision of Courts relied upon by the learned counsel for the Petitioner are not at all applicable to the facts of this case. There are sufficient materials available in this case to come to the conclusion that the action of the Management taken against the petitioner/workman is just, proper and legal and that it cannot be held as bad for want of proper enquiry on the charges levelled against the petitioner and under such circumstances, the petitioner cannot have any relief, as prayed for. Thus, I answer the point accordingly.

11. In the result, an award is passed holding that the action of the Management of Southern Railway, Madras in terminating the services of Sri D. Suresh, Ex. Peon/Lascar without holding proper enquiry on the charges levelled against him is just, proper and legal. Hence, the concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th June, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

Documents Marked :

For I Party/Claimant :

Ex. No.	Date	Description
W1	19-2-90.	Xerox copy of appointment order of the Petitioner.
W2	5-2-92.	Xerox copy of order of transfer issued to the Petitioner.
W3	17-8-92.	Xerox copy of show cause notice.
W4	21-8-92.	Xerox copy of explanation of the Petitioner to show cause notice.
W5	28-8-92.	Xerox copy of order of Termination of the Petitioner.
W6	14-8-92.	Xerox copy of a confidential note from the CPM/GC/MS to DY. CE/HQ/MS.
W7	27-8-92.	Copy of office note from Secretary to CAO/C & DY. CE/Hd./CN to CPM/GC.

For II Party/Management : Nil.

नई दिल्ली, 4 जुलाई, 2001

का. आ. 1814.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार सादर रेलवे, मद्रास के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण/श्रम न्यायालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 3-7-2001 का प्राप्ति हुआ था।

[सं. एल-41012/201/95-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1814.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway, Madras and their workman, which was received by the Central Government on 3-7-2001.

[No. L-41012/201/95-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Monday, the 11th June, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 408/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 91/96)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri S. Abraham and the Management of the Divisional Railway Manager, Southern Railway, Madras.)

BETWEEN

S. Abraham. . . I Party/Workman.

AND

The Divisional Railway Manager.

Southern Railway, Madras.

. . . II Party/
Management.

APPEARANCE :

For the Workman : Sri S. Bakthavatsalu, Authorised Representative.

For the Management : Mr. P. Arulmudi, Advocate.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide Order No. L-41012/201/95-IR(B-1) dated 27th September, 1996 :—

“Whether the action of the Management of Southern Railway, Madras in removing Shri S. Abraham from service w.e.f. 28-05-87 is legal and justified? If not, to what relief the workman is entitled?”

This matter came up before me for final hearing on 30-4-2001, upon perusing the Claim Statement, Counter Statement and other material papers on record, the oral evidence of the Petitioner and the documentary evidence of the Respondent and upon perusing the written arguments submitted on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

2. This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 91/96. On receipt of notice from that Tribunal, the Petitioner through his authorized representative and the Respondent through his counsel entered appearance and filed their respective Claim Statement and Counter Statement. When the matter was pending enquiry, before the Tamil Nadu State Industrial Tribunal, as per the orders of transfer by the Central Government, this case has been transferred from the file of Tamil Nadu State Industrial Tribunal to the file of this Tribunal for adjudication. On receipt of records of this case from the Tamil Nadu State Industrial Tribunal, this case has been taken on file here as I.D. No. 408/2001 and notices were sent to the representative of the I Party and the counsel for the II Party, informing them about the transfer of this case from the file of Tamil Nadu State Industrial Tribunal to the file of this Tribunal, with a direction to appear before this Court with their respective parties to prosecute this case further on 22nd February, 2001. Accordingly, both the parties appeared before this Tribunal along with the authorized representative and the counsel on record respectively and prosecuted this case further.

3. The facts of this industrial dispute in brief as stated in the Claim Statement of I Party/Workman are as follows :—

The I Party/Workman (hereinafter referred to as Petitioner) Sri S. Abraham was initially engaged as a sanitary cleaner by the II Party/Management, Southern Railway (hereinafter referred to as Respondent) on 1-1-77. He was granted temporary status on 11th February, 1981 and subsequently empanelled as temporary sanitary cleaner w.e.f. 21-10-82 and was transferred to work under Health Inspector, Jolarpet. The petitioner fell ill on 4-9-85 and he was taking treatment under a Psychiatrist Dr. Ramadoss in the institute of Mental Health till 27-5-87. For the period of his absence, due to ill-health, he had sent a medical certificate issued by the said Doctor but the name of the Petitioner was removed from the Rolls by the

Assistant Medical Officer at Jolarpet without any show cause notice or conducting enquiry. The action of the Assistant Medical Officer is arbitrary, illegal and against the principles of natural justice. The appeal preferred by the Petitioner to the Appellate Authority was also dismissed without any speaking orders. The unjustified and arbitrary act of the Assistant Medical Officer, who is not the appointing authority, when he failed to take prior permission from the competent authority, the Petitioner is deemed to be in service from 28-5-87 onwards. The Respondent has committed various unfair labour practice and the competent authority has not applied his mind in passing orders for removing the Petitioner from services. Hence, the action of the Respondent/Management is illegal and unjustified.

4. The II Party/Respondent/Management in their Counter Statement has stated as follows :—

The Petitioner was a frequent absentee. He was unauthorisedly absent on many occasions for that he was imposed with penalty of withholding of one set of privilege pass for the year 1984. Despite the said penalty, he had again absented himself from 23-10-83 to 1-8-84 consequently, he was issued with a charge memo for his absence and a penalty of withholding of annual increment in scale of Rs. 196 to Rs. 232 was imposed for the period of six months. Nevertheless, he was again unauthorisedly absent from 4-9-85 till the issuance of another charge sheet dated 11-8-86. It was sent by Registered Post to the last known address of the Petitioner furnished by him and a copy of the same was pasted on the notice board of Health Inspector, Jolarpet on 2-9-86. The charge sheet sent by post returned unserved with the postal endorsement 'that the addressee was not available'. As the Petitioner was absent from 4-9-85 there was no response for the charge sheet, dated 11-8-86. So the Disciplinary Authority, i.e. Assistant Divisional Medical Officer was left with no other option except to take final decision under Rule 14 of Discipline and Appeal Rules, 1968 by imposing the penalty of removal from service w.e.f. 5-12-86. The penalty advise also sent by Registered Post to the last known address of the Petitioner and a copy was pasted on the notice board of the Health Inspector, Jolarpet, wherein he was last stationed. The Petitioner had neither responded for the charge nor attended the enquiry. The Petitioner sent a mercy appeal to the Appellate Authority, Divisional Medical Officer on 15-6-87 enclosing a Photostat copy of medical certificate issued by a Private Medical Doctor R. Ramadoss in his personal capacity stating that the Petitioner was under his treatment from 4-9-85 and he had advised rest for the Petitioner upto 27-5-87 and was found fit for duty on 28-5-87. The Appellate Authority after careful consideration had passed a speaking order on 24-8-87 confirming the penalty imposed by the Assistant Medical Officer and sent the same to the Petitioner on 24-8-87. Normally an appeal should be made within 45 days from the date of receipt of the penalty advise. The Appellate Authority considered the plea and had passed speaking order, even though the appeal was time barred. The Railways are having Railway Hospital everywhere and are providing free treatment to their employees. In case of sickness the certificate issued by the Railway Medical Officer only will be

accepted by the administration. The Petitioner had produced a private medical certificate from a Doctor who was residing at Mahalingapuram, Madras-34. The Petitioner might as well availed the treatment at Railway Hospital situated at Egmore or Perambur, Madras. The removal of the employee from the services of the Railway Administration does not attract any other provisions of Industrial Disputes Act. The Petitioner has raised the issue in various Forums. The CCP No. 128/87 the Petitioner filed before the Labour Court was dismissed on 29-3-93. He filed another petition before that Labour Court CCP 65/96, still pending. Now the Petitioner has raised the same issue before this Tribunal. Hence, the Petition is barred by principles of *res judicata*. The petition is devoid of merits and is misconceived with a mala fide intention to defraud the union exchequer. Hence, the petition is required to be dismissed.

5. When the matter has been taken up for enquiry, the Petitioner who already filed into the Court his proof of affidavit, was cross examined by the learned counsel for the Respondent and his evidence has been treated as evidence of Workman witness No. 1. On the side of the Respondent/Management, documents were marked by consent of either party as Exs. M1 to M11. The learned counsel for the Respondent has informed the Court that the II Party/Management has no oral evidence. The written arguments of the authorized representative of the I Party/Petitioner and the counsel for the II Party/Management were filed separately.

6. The point for my consideration is—

“Whether the action of the Management of Southern Railway, Madras in removing Shri S. Abraham from service w.e.f. 28-05-87 is legal and justified? If not, to what relief the workman is entitled?”

Point :—

The I Party/Workman/Petitioner Sri S. Abraham was working as Sanitary Cleaner under the control of Health Inspector at Madras Central Railway Station under the Respondent/Management, Southern Railway w.e.f. 1-1-77. He has admitted in evidence as WW1 that he last worked as Sanitary Cleaner in Railways at Jolarpet and he was under the control of Health Inspector, Jolarpet. Ex. M1 is the xerox copy of particulars for the attendance of the Petitioner for duty from 30th August, 1985 to July, 1986. As per this document, subsequent to August 30, 1985 he remained absent for the period from September, 1985 to July, 1986. The Health Inspector, Jolarpet has intimated the Petitioner's unauthorized absent for duty as Sanitary Cleaner to higher authorities by his letter dated 26-7-1986. A xerox copy of the same is Ex. M2. In pursuance of that the Divisional Railway Manager has directed for initiating action for the Petitioner's unauthorized absence from 4-9-85 for imposing major penalty. The xerox copy of that letter dated 28-7-86 is Ex. M3. Accordingly, disciplinary action has been taken and the charge sheet dated 11-8-86 was issued to the Petitioner. A xerox copy of the same is Ex. M4. The charge sheet sent by Registered Post was returned unserved with the postal endorsement “as the addressee is not available”. A xerox copy of

that returned postal cover is Ex. M5. Then an order was passed by the Assistant Divisional Medical Officer, Jolarpet, Southern Railway on 5-12-86 imposing the punishment of removal from service of the Petitioner Sri Abraham w.e.f. 5-12-86. The xerox copy of the same along with the covering letter is Ex. M6. The Petitioner has submitted a petition to the Appellate Authority dated 15-6-87 along with medical certificate issued by Dr. Kannadoss, Psychiatrist. The xerox copy of that letter is Ex. M7 and the xerox copy of the Doctor certificate is Ex. M8. The Sr. Divisional Personnel Officer as Appellate Authority has dismissed that appeal confirming the order passed as a penalty by the Assistant Divisional Medical Officer on 5-12-86. A xerox copy of that order dated 24-8-87 is Ex. M9. The xerox copy of the service register of the Petitioner Sri S. Abraham is Ex. M10. The extract of leave rules 521 (xerox copy) from the Indian Railway Establishment Code has been filed as Ex. M11. All these documents have not been disputed by the Petitioner Sri S. Abraham. In the cross examination the Petitioner, as WW1 has admitted that there is a railway hospital at Jolarpet and if he is to avail medical leave, he has to get a medical certificate from the Doctor of Railway Hospital. He has admitted that once he was given a punishment for going on leave often and he denied the suggestion that for his absence from 23-10-83 to 01-08-84 disciplinary action was taken by issuing a charge sheet and after conducting an enquiry; punishment was imposed withholding one increment for a period of six months. A perusal of the Service Register Ex. M10 shows that this Petitioner was imposed a punishment of withholding the issue of one set of privilege pass due for 1984, since he remained absent for duty unauthorisedly without obtaining prior sanction of leave for a total number of 26 days in six spells. That entry in Ex. M10 in his service book has not been disputed. There is another entry in his service book stating that he had absented himself from duty during the periods mentioned thereunder unauthorisedly without obtaining prior sanction of leave. For that he was imposed with punishment of withholding his annual increment for a period of six months. His removal from service w.e.f. 5-12-86 for his absence from duty unauthorisedly from 4-9-85 to that date continuously without sanction of the competent authority has also been mentioned in his service register, Ex. M10. The said punishment imposed by ADMO/JTJ which has been subsequently confirmed by the appellate authority also has been made as an entry in his service book. From this it is seen that WW1 has deposed falsely by denying the suggestion that for his unauthorized absence from 23-10-83 to 01-8-84 the disciplinary action was taken and he was imposed a punishment of withholding of one increment for a period of six months. He has admitted that from 4-9-85, he stopped going for work at Jolarpet and he has not informed his inability to attend the work to his superiors from 4-9-85. It is also his admission that he was permanently residing at Ayanawaram at Madras and he knew that there is one Railway Hospital at Perambur and from Ayanawaram to Perambur it is 3 kms. in distance. He has also admitted that he has not produced any records for having taken treatment in Kilpauk Mental Hospital. It is also his admission that from 4-9-85 to the date on which he gave the certificate in 1987 he had not gone for work. He has also

admitted that except the Doctor certificate he has not produced any other document to show that he was taking treatment for two years in the mental hospital. It is his further admission that in Railways all medical treatments are given to employees in the Railway Hospital on free or cost. It is his further admission that he had not reported to the Doctor at Railway Hospital to get a fitness certificate and that only if the fitness certificate issued by medical officer of the Railway Hospital, he can rejoin duty. Though the Doctor certificate has been produced by the Petitioner along with representation under Ex. M7 the Doctor who gave the medical certificate under Ex. M8 has not been examined by the Petitioner/Workman to speak about the contents of that medical certificate. So, Ex. M8 Doctor certificate remained unproved. From the facts available from out of the oral and documentary evidence in this case, it is seen that the Petitioner was a frequent absentee and he was unauthorisedly absent from duty on many occasions, due to which he was imposed with penalty. On such punishments given to the Petitioner for his unauthorized absent from duty, relevant entries had been made in service register, Ex. M10. It is the admission of the Petitioner himself as WW1 that he remained absent from 4-9-85. He had not reported the authorities about his absence for duty due to ill health. He has also not chosen to take medical treatment for his alleged ill health from the Railway Hospital wherein he can get free treatment for his ailment. From the facts available in this case it is seen the petitioner was absent from 4-9-85, when there was no response to the charge sheet sent to the last known address, the Disciplinary Authority has taken action against the Petitioner for his unauthorized absence without prior sanction from the authority and had taken a final decision under Rule 14 of Railway Servants (Discipline & Appeal) Rules, 1968 and had passed an order of removal from service on 5-12-86. There is sufficient materials available in this case by way of documentary evidence on the side of the Respondent/Management that the penalty advise was communicated by Registered Post to the Petitioner to the last known address and the same was exhibited in the notice board where the petitioner was last working i.e. in Jolarpet. Under Rule 521 of Leave Rules mentioned in Indian Railway Establishment Code Vol. I, it is clearly stated that an application for leave on medical certificate made by Railway servant in Group C and D shall be accompanied by medical certificate given by a Railway Medical Officer defining as clearly as possible the nature and duration of illness. It is also stated as sub-rule 2 of Rule 521 that when a railway servant residing outside the jurisdiction of Railway Medical Officer requires leave on medical certificate, he should submit within 48 hrs. a sick certificate from the Registered Medical Practitioner. The Competent Authority may at his discretion accept the certificate or in cases where it has reason to suspect the bona fide referred the case to the Divisional Medical Officer for advise or investigation. A medical certificate from Registered Private Practitioners used by railway servant in support of their application for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verification on the basis of the advise tendered by him after such verification. As a note to this Rule it is stated that "ordinarily the

jurisdiction of the Railway Medical Officer will be taken to cover railway servant residing within a radius of 2.5 kms. of the Railway Hospital or Health Unit to which the Doctor is attached and within a radius of one kilometre of a railway station of the Doctor's beat." So from all these it is evident that the Petitioner/Workman who has said to be ill from 4-9-85 has not followed the procedure that he has to adopt as per the prescribed rules for availing medical leave. It is his evidence that only when he presented the petition after dismissal from service by his appeal dated 15-6-87 under Ex. M7 he had sent a medical certificate issued by a Doctor under Ex. M8. He has not chosen to inform the authority about his mental illness. The treatment he obliged to take for the same in a hospital other than the Railway Hospital has not been intimated to the authorities concerned prior to his representation dated 15-6-87 under Ex. M7. From the documentary evidence, available on the side of the Management, it is seen that the competent authority has taken disciplinary action against the petitioner/workman for his unauthorized absence from duty as per Indian Railway Establishment Code and Railway Servants (Discipline & Appeal) Rules, 1968. So under such circumstances, it cannot be said that the action taken by the Management, the Respondent herein, for the unauthorized absence of the Petitioner/Workman from duty by way of disciplinary action and by passing an order in removing Sri S. Abraham from service with effect from 28-5-87 is illegal or unjustified. Hence, the Petitioner/Workman is not entitled to any relief. Thus, I answer the point accordingly.

7. In the result, an award is passed holding that the action of the Management, Southern Railway in removing Sri S. Abraham from service with effect from 28-5-1987 is legal and justified and hence the concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th June, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

For I Party/Claimant : W.W.1 Shri S. Abraham.

For the II Party/Management : None.

Documents Marked:—

For I Party/Claimant : Nil.

For II Party/Management :

- | Ex. No. | Date | Description |
|---------|-------------|--|
| M1 | March, 1986 | Copy of the Attendance Register. |
| M2 | 26-7-86 | Copy of the correspondence between the Health Inspector, Southern Railway and the D.M.O. Madras. |
| M3 | 28-7-86 | Copy of the correspondence between the DMO & Head Office. |
| M4 | 11-8-86 | Copy of the charge sheet. |
| M5 | 27-8-86 | Xerox copy of the postal acknowledgement. |
| M6 | 14-12-86 | Xerox copy of the order of removal from service of I Party by the Management. |

M7 15-6-87—Xerox copy of the Petitioner's representation to the D.M.O. Madras.

M8 25-5-87—Xerox copy of the Doctor Certificate.

M9 24-8-87—Xerox copy of the letter of DMO informing the order of the Appellate Authority against the appeal filed by the Petitioner.

M10 Nil—Xerox copy of the service register of the Petitioner.

M11 Nil—Xerox copy of the Indian Railway Establishment Code Vol. I.

नई दिल्ली, 4 जुलाई, 2001

का. अ. 1815.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया के प्रबन्धन के संबंध नियाजकों और उनके कर्मचारों के बीच, असंगठित में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/410/99-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th July, 2001

S.O. 1815.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India and their workman, which was received by the Central Government on 3-7-2001.

[No. L-12012/410/99-IR(B-I)]
AJAY KUMAR, Desk Officer
अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर।

प्रकरण संख्या :—सी.जी.आई.टी./16/2000

आदेश संख्या :—एल.-12012/410/99/आई.आर. (बी-1)
22-2-2000

डी चीफ सैक्रेटरी,
रिजर्व बैंक वर्क्स यूनियन,
रिजर्व बैंक ऑफ इंडिया,
रामबाग सिकल, जयपुर।

... प्रार्थी यूनियन

बनाम

डी चीफ जनरल मैनेजर,
रिजर्व बैंक ऑफ इंडिया,
रामबाग सिकल, जयपुर।

... प्रार्थी

उपस्थित—

प्रार्थी की ओर से

श्री जी. एम. गिज

अप्राथी की ओर से

श्री डी. एन. त्रिपाठी

पंचाट दिनांक :—30-5-2001

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम, 1947 कहा गया है।) की धारा-10 की उपधारा (1) के खण्ड-अ के प्रावधानों के अन्तर्गत न्याय निर्णय हेतु उक्त आदेश के जरिए प्रेषित किया गया।

"Whether the action of the management of Reserve Bank of India, Jaipur awarding the punishment of stoppage of 5 increments of Shri G. L. Jopat, Chief Secretary of the union in contravention of Principles of Natural justice and against the established norms and practice of RBI (Staff) Regulation, 1948 was justified? If not, what relief the workman is entitled?"

रिजर्व बैंक वर्क्स यूनियन (जिसे बाद में यूनियन कहा गया है।) की ओर से यूनियन के अध्यक्ष के द्वारा स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि दिनांक 30-3-91 को एक समझौता रिजर्व बैंक प्रबन्धन तथा रिजर्व बैंक एम्प्लॉयज एसोसिएशन (जिसे बाद में एसोसिएशन कहा गया है।) एवं यूनियन के मध्य सम्पन्न हुआ। समझौते में वर्णित कुछ मुद्दों की अनुपालना हुई परन्तु बहुत से छोड़ दिए गए, जिसकी अनुपालना हेतु संयुक्त रूप से आन्दोलन हुआ। आन्दोलन समाप्त के दौरान प्रबन्धन की ओर से आश्वासन दिया गया कि कोई नुकसान पहुंचाने वाली जैसी कार्यवाही नहीं होगी। किन्तु बैंक प्रबन्धन ने तत्कालीन का परिचय देते हुए यूनियन के मुख्य सचिव जी.एन. जोष (जिसे बाद में प्रार्थी कहा गया है।) को दिनांक 26-12-91 से बैंक सेवा से निवृत्त कर दिया। आन्दोलन का आह्वान संयुक्त रूप से दोनों संगठनों द्वारा किया गया था, किन्तु प्रबन्धन ने तृतीय श्रेणी के किसी कर्मचारी को भी तो नुकसान नहीं दिया। प्रार्थी को आरोप-पत्र प्रधान मुख्य महाप्रबंधक, केन्द्रीय कार्यालय, मुम्बई के द्वारा जारी किया गया। जबकि भारतीय रिजर्व बैंक (स्टाफ) विनियमावली, 1948 (जिसे बाद में विनियमावली, 1948 कहा गया है।) के खण्ड-3(ई) के अनुसार उक्त कार्यवाही के लिए स्थानीय मुख्य महाप्रबंधक सक्षम अधिकारी है। प्रार्थी को 8 वेतन वृद्धि स्थाई रूप से कम करने का दण्ड प्रस्तावित किया गया, जिसके प्रत्युत्तर में प्रार्थी ने निर्दोष होने का निवेदन करते हुए प्रस्तावित दण्ड से मुक्त करने की अपील की, जिसकी अन्तर्दृष्टि करने हुए दिनांक 26-12-94 से 27-8-97 तक की विवर्धन अवधि बिना वेतन भत्तों की अनुधारण छूटी जो वेतन वृद्धि एवं निवृत्ति वेतन के लिए नहीं गिनी जाएगी, का आदेश दिनांक 28-10-97 को पारित कर दिया। दिनांक 26-10-98 को उक्त आदेश पर पुनर्विचार करने की अपील गवर्नर को की गई, जिस पर वेतन के 8 चरण कम करने के स्थान पर 5 वेतन वृद्धि कम करने का दण्ड आरोपित किया। यह भी

उल्लेख किया गया कि प्रार्थी ने व्यक्तिगत रूप से या दुर्भावनावाश कुछ नहीं किया। यूनियन तथा एंशोमिणशन का संघर्ष चल रहा था, परन्तु प्रबंधन की ओर से केवल अधिकारियों को ही साक्ष्य में प्रस्तुत किया गया, जिन्होंने दबाव में आकर उत्तर दिए। इसके बावजूद बैंक के साक्षी वेदप्रकाश ने स्पष्ट कहा है कि प्रार्थी ने विजली बंद नहीं करवाई। प्रार्थी के विरुद्ध विजली बंद कराने का आरोप असत्य है, क्योंकि वह दिनांक 21-12-94 को छुट्टी पर था व एंशोमिणशन पदाधिकारियों ने फोन करके उसे बुलाया था व शाम के 3.00 बजे वह बैंक पहुंचा तो विजली पहले से ही बंद थी। प्रार्थी ने प्रदर्शनों का नेतृत्व नहीं किया बल्कि तृतीय श्रेणी कर्मचारियों के समर्थन में प्रतिनिधि नेतृत्व कर रहे थे। प्रार्थी के विरुद्ध की गई कार्यवाही पूर्वाग्रह से ग्रसित है। अनुशासनिक अधिकारी एवं जांच अधिकारी ने साक्ष्य का सही विवेचन नहीं किया। प्रतिरक्षा साक्ष्य में प्रस्तुत मौखिक एवं दस्तावेजी साक्ष्य को स्वीकार नहीं किए जाने का कोई व्यक्ति-युक्त आधार अंकित नहीं किया गया व पक्षपातपूर्ण रवैया अपनाया। प्रार्थना की गई कि प्रार्थी के विरुद्ध पांच वेतन वृद्धि रोकने संबंधी आदेश को निरस्त किया जाए व प्रार्थी को समस्त सेवालाभ दिलाए जाए।

विपक्षी की ओर से जवाब प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि रिजर्व बैंक ऑफ इंडिया (जिसे बाद में बैंक कहा गया है) रिजर्व बैंक ऑफ इंडिया एक्ट 1934 द्वारा गठित किया गया है, जिसकी एक शाखा जयपुर में है। बैंक का कार्य देश की अर्थव्यवस्था को स्थिर करने हेतु "वित्तीय व्यवस्था" को नियंत्रित करना है। बैंक नोट जारी किए जाने को नियंत्रित भी करता है व कोष रखने के लिए भी उत्तरदायी है। बैंक केन्द्र सरकार व राज्य सरकारों बैंक का कार्य भी करता है। वह वाणिज्यिक बैंक व वित्तीय संस्थानों का एक मात्र बैंक भी है। बैंक के उक्त महत्वपूर्ण कार्यों को दृष्टिगत रखते हुए बैंक को "लोकउपयोगी सेवा" घोषित कर दिया गया। बैंक के उक्त कार्यों को दृष्टिगत रखते हुए बैंक में अवैध हड़ताल पर पूर्णतया रोक है। यदि कर्मचारियों का कोई भाग या कोई ट्रेड यूनियन अवैध हड़ताल कर देती है तो बैंक के पूरे कार्य में बाधा उत्पन्न हो जाती है। बैंक के निर्माण व रोकड़ विभाग का संचालन प्रबंधक का कार्य है। रोकड़ अनुभाग का कार्य साधारणतया नोट परीक्षण अनुभाग में किया जाता है। कितने दिन कितने मुद्रा परीक्षण अनुभागों में कार्य होता है निबंधन के द्वारा कार्य के आधार पर व नियमित कर्मचारियों की उपस्थिति के आधार पर तय किया जाता है। कोई कर्मचारी या यूनियन अधिकार स्वरूप यह मांग नहीं कर सकता कि किसी सिक्का अथवा मुद्रा परीक्षण अनुभाग को चालू किया जाए भले ही कार्य न हो, केवलमात्र इस कारण से कि किसी कर्मचारी को पदोन्नति का लाभ प्राप्त हो जाएगा। दिनांक 30-3-91 का समझौता अधिनियम

947 के प्रावधानों के तहत समझौते की परिभाषा के अन्तर्गत नहीं आता। यूनियन का एक प्रतिनिधित्व चतुर्थ मुद्रा परीक्षण

अनुभाग खूबसूरती से अथवा चातु करने के लिए जोर देने का कोई प्रोत्साहन नहीं था बैंक प्रबंधन पर अनावश्यक दबाव डालने हेतु यूनियन के द्वारा जानबूझकर बैंक के वरिष्ठ अधिकारियों के प्रति अभियान छेड़ा गया। प्रार्थी ने विनियमबलों 1948 के नियम, 47 के अन्तर्गत गम्भीर दुराचरण किया था। उसे दिनांक 26-12-94 को निलम्बित किया गया व तत्पश्चात् दिनांक 31-12-94 को दुराचरण के लिए उसे आरोपित किया गया। चूंकि प्रार्थी ने दुराचरण बैंक को जयपुर शाखा के प्रबंधक के साथ भी किया था, अतः मुख्य प्रबंधक के द्वारा उसे आरोपित किया गया एवं वरिष्ठ अधिकारियों के ए. नजमी को जांच अधिकारी नियुक्त किया गया। जांच अधिकारी के द्वारा प्राकृतिक न्याय के सिद्धांतों की पालना करने हुए जांच का व प्रार्थी को बोझ पाया। प्रार्थी को पूर्ण अवसर दिया जाकर प्रमाणित आरोपों के लिए उसे दण्डित किया गया। प्रार्थी को प्रत्यक्षदर्शी साक्ष्य प्रस्तुत करने का पूर्ण अवसर दिया गया। प्रार्थी पर व्यक्तिगत दुराचरण के आधार पर आरोप लगाए गए थे। जांच अधिकारी ने दोनों पक्षों के द्वारा प्रस्तुत साक्ष्य पर विचार कर निष्कर्ष निकाले थे जिसकी पुष्टि उस तथ्य से भी होती है कि जांच अधिकारी ने आरोप संख्या 1 आंशिक रूप से प्रार्थी के विरुद्ध प्रमाणित पाया व आरोप संख्या प्रार्थी 4 के विरुद्ध प्रमाणित नहीं पाया। मानवता के आधार पर अपील में 8 वेतनवृद्धि रोकने के आदेश के स्थान पर 5 वेतनवृद्धि रोकने का आदेश दिया गया।

प्रार्थी की ओर से प्रत्युत्तर प्रस्तुत किया गया, जिसमें अपने क्लेम में वर्णित तथ्यों को दोहराया।

प्रार्थी के विरुद्ध आरोप पत्र दिनांक 31-1-94 के द्वारा निम्न आरोप लगाए गए :—

2. It is reported that :—

(i) On December 21, 1994 when a section of the employees had struck work, the power supply to the Bank building went off around 12.30 p. m. On enquiry by Shri Bansode, Assistant Engineer (Elec.), Shri Ved Prakash Singh, sub-station Attendant reported that he was forced by some of the striking employees to switch off the power supply. The Assistant Engineer (Elec.) could get the power supply restored at around 2.15 p. m. However, about 10 minutes later, you, alongwith Shri Om Singh, again forced Shri Ved Prakash Singh to switch off the power supply to the Bank building. When Shri Ved Prakash Singh was explaining the situation to the Assistant Engineer (Elec.), you entered the Estate Department and shouted at the Assistant Engineer (Elec.) stating that your (Union's) member will not switch on the supply. Shri Ved Prakash Singh, sub-station Attendant was then forcibly led away from the Estate

Department. The power supply to the office building could be restored only at about 3.45 p. m. Lack of power supply to the Bank building for about 3 hours not only caused loss of manpower to the Bank for a major part of the day, but also exposed the Bank as well as the treasure to grave security risk.

- (ii) On December 22, 1994, when both the Class III and IV employees were on illegal strike, at around 9.45 a. m., you went to the Issue Department and unauthorisedly took the attendance register pertaining to class IV employees from the desk of Shri N. K. Jhanwar, Staff Officer Gr. "A" attached to that department and started examining the attendance of Class IV staff in that department. Soon thereafter, it was further reported that you started forcibly leading Shri Laxmi Kant Mishra, Peon attached to Issue Department, who had signed the attendance register on that day, out of the department. When Shri Jhanwar intervened and requested you not to do anything forcibly, you flared up and shouted filthy abuses as also threats against him. You said

"तुम मादरबोर्ड की तो मैं बाहर पीटूँगा, मर्दाने तुम मैनेज-मेंट के चमके हो, तुम्हें हम पीट देगे।"

At this time, Shri Madan Lal, the currency Officer came out of his chamber on hearing the noise and requested you to stop abusing and not to create an ugly scene. You also abuse him (calling him " मादरबोर्ड " etc). It was also reported that you were incoherent in your speech and also smelling of alcohol. After about 10.10/15 minutes you re-entered the department with a number of class III and IV employees and shouted abuses at Shri Jhanwar and Shri Madan

- (iii) On that day, i.e. 22nd December 1994 at about 10.00 a. m. large number of class III and IV employees stormed into the manager's chamber shouting slogans in support of their demand for restoration of status-quo-ante in respect of reorganisation of NESS. During the retire process of demonstration, you were reported to be most prominent among those who were inciting the employees and in a state of drunkenness. You were also reported to have climbed the Manager's table and asked him to talk to Central Office over phone immediately in your presence and to restore the old system of NESS. As it was

not possible to talk over telephone in the din and noise in the chamber at that time, the manager did not respond to your demand. At this, you shouted at the senior officers assembled around the manager to get out of the chamber. When they did not do so, you shouted.

"दास्तों, अभी मैं का काम करने जा रहा हूँ जिसके अंजाम की मुझे परवाह नहीं है।"

and approached menacingly towards the manager and other senior officers standing across the table. Subsequently the manager and other senior officers went to the Deputy Manager's chamber with a view to consulting the Central office over telephone in the matter. The demonstrating employees reassembled in front of the Deputy Manager's chamber and started shouting slogans and banging the door of the Deputy Manager's chamber. There also you forcibly came inside the chamber and shouted angrily.

"अगर चौका सेवक ब्रह्मच नहीं किया तो मारेंगे— तुम सबको मारेंगे।"

- (iv) When the demonstration in front of the Deputy Manager's chamber was continuing, you went to the Issue Department and rushed into the Currency Officer's chamber at about 12.10 p. m. leading a large group of class III and IV employees shouting and gesticulating violently. You rushed towards Shri Madan Lal shouting filthy abuses like "बहुतबोर्ड", "चूतीया" etc. when you were taken out of the room by some employees, you stood on a table outside the Currency Officer's chamber for about 10 to 15 minutes and repeatedly shouted filthy abuses as also physical threats against the Currency Officer.

3. In view of the circumstances stated in para 2 above, you are charged with having committed breach of office discipline and acts of gross misconduct within the meaning of Regulation 47 of the Reserve Bank of India (Staff) Regulation, 1948 by :

- (i) having caused power supply to the Bank's building to be switched off on 21 December 1994 for about 3 hours as a result of which the Bank alongwith the treasure kept therein were exposed to grave risk apart from seriously hampering the Bank's work ;
- (ii) having indulged in hurling abuses against Sarvashri Madan Lal, Currency Officer and N. K. Jhanwar, Staff Officer Gr. 'A'

in filthy and highly offensive language, and in acts of intimidation ;

(iii) having tried to intimidate the Manager and other senior officers inside the Manager's chamber as also inside Deputy Manager's chamber and held out physical threats against them ; and

(iv) having been in the Bank's premises in a state of intoxication and smelling of alcohol ; in violation of Regulation 41 B of the Reserve Bank of India (Staff) Regulation, 1948.

जांच अधिकारी के द्वारा जांच के पश्चात् आरोप संख्या-1 इस हद तक प्रमाणित पाया कि लगभग 2.25 के बाद जब वेद प्रकाश ने बिजली की सप्लाई चालू की तो उसे प्रार्थी व उसके सहयोगियों ने 10 मिनट बाद पुनः बंद करवा दी। आरोप संख्या-2 व 3 भी प्रार्थी के विरुद्ध प्रमाणित पाए। आरोप संख्या-4 प्रार्थी के विरुद्ध प्रमाणित नहीं पाया।

यूनियन के प्रतिनिधि के द्वारा प्रार्थी के विरुद्ध जांच कार्यवाही को उचित होना स्वीकार किया गया। आरोप प्रार्थी के विरुद्ध आरोप प्रमाणित होने व दण्ड की भावा के बारे में पक्षकारों के विद्वान प्रतिनिधियों के तर्क सुने गए एवं पत्रावली का ध्यातपूर्वक अवलोकन किया गया।

पक्षकारों के विद्वान प्रतिनिधियों ने अधिकरण किम सीमा तक जांच अधिकारी के द्वारा निकाले गए तथ्यात्मक निष्कर्षों में दण्ड की मात्रा में हस्तक्षेप कर सकता है, के बारे में जो न्याय दृष्टान्त प्रस्तुत किए हैं उनका उल्लेख करना उचित होगा। प्रार्थी के विद्वान प्रतिनिधि ने 1965 1 एल.एल.जे. पृष्ठ 462 हिन्दुस्तान कन्सट्रक्शन एण्ड इंजीनियरिंग कम्पनी लिमिटेड बनाम उनके कर्मकार, ए.आई. आर. 1958 (एस.सी.) पृष्ठ 130 मैसर्स इण्डियन ऑयल एण्ड स्टील कम्पनी लिमिटेड व अन्य बनाम उनके कर्मकार एवं 1984 (मल्लीमंदी) एस.सी.सी. पृष्ठ 128 वावूलाल नागर व अन्य बनाम श्री सिन्धेटक्स लिमिटेड व अन्य को उद्धृत किया है। 1965-1 एल.एल.जे. 462 पर प्रकाशित मामले में यह अभिनिर्धारित किया गया है कि औद्योगिक न्यायाधिकरण दण्ड की मात्रा में तभी हस्तक्षेप कर सकता है जबकि दुराचरण को दृष्टिगत रखते हुए दण्ड की मात्रा दण्ड के अनुपात में न होकर विषम हो एवं धक्का पहुंचाने वाली हो व ऐसी परिस्थिति में कोई विवेकशील व्यक्ति ऐसा दण्ड नहीं देता। ए.आई.आर. 1958 (एस.सी.) 130 पर प्रकाशित मामले में यह अभिनिर्धारित किया गया है कि औद्योगिक न्यायाधिकरण को इस बाबत विचार करने का अधिकार है कि क्या सेवा समाप्ति उचित है व न होने की दशा में कर्मकार को क्या सहायता दी जाए? दुराचरण के आधार पर सेवाभूक्ति के मामले में न्यायालय अपीलीय न्यायालय का कार्य नहीं करता व उन्हीं मामलों में हस्तक्षेप करने का अधिकार रखता है, जहां सहायता की कमी हो अथवा कर्मकार के साथ अनुचित श्रम व्यवहार किया गया 2204 GI/2001—7

हो अथवा कर्मकार को तंग करने की कार्यवाही की गई हो अथवा प्राकृतिक न्याय के सिद्धान्तों की अवहेलना की गई हो अथवा जांच अधिकारी के द्वारा निकाले गए निष्कर्ष अप्रामाण्य हो अथवा विपरीत हों। 1984 (मल्लीमंदी) एस.सी.सी. 128 पर प्रकाशित मामले में यह अभिनिर्धारित किया गया कि जांच अधिकारी के द्वारा निष्कर्ष के बारे में तभी हस्तक्षेप किया जा सकता है जबकि निष्कर्ष विधिक साक्ष्य से समर्थित न हो अथवा इसके विपरीत हो अथवा कोई भी विवेकशील व्यक्ति ऐसा निष्कर्ष नहीं निकाल सकता था। उक्त मामले में यह भी निर्धारित किया गया कि ए.सी. इण्डस्ट्रीयल रिलेशन एक्ट, 1960 की धारा 66 के तहत श्रम न्यायालय के द्वारा उक्त अधिनियम की धारा 61 के प्रावधानों के अन्तर्गत पारित अनुचित आदेश को औद्योगिक न्यायालय के द्वारा निरस्त किया जा सकता है।

दूसरी ओर अप्रार्थी के विद्वान प्रतिनिधि के द्वारा 1999 (001) एल.एल.जे. 1124 (एस.सी.) स्टेट ऑफ कनेटिका व अन्य बनाम बी.एच. नगराज, 1999(001) एल.एल.जे. 1229 (एस.सी.) श्री जी. विद्यालय व अन्य बनाम पटेल अनिल कुमार लल्लू भाई, 1998(002) एल.एल.जे. 0629-एस.सी. सचिव, सरकार, गृह विभाग व अन्य बनाम श्री वैकुण्ठअथन, 1996 ए.आई.आर. (एस.सी.) 484 बी.एच.एल. मार्क बनाम यूनियन ऑफ इण्डिया व अन्य को उद्धृत किया है। 1999(001) एल.एल.जे. 1124-एस.सी. पर प्रकाशित मामले में यह अभिनिर्धारित किया गया है कि अनुशासनिक विषयों एवं दण्ड के मामलों में न्यायाधिकरण का क्षेत्राधिकार अपीलीय प्राधिकारी के समान नहीं है। जांच अधिकारी के द्वारा निष्कर्षों में न्यायाधिकरण जब तक हस्तक्षेप नहीं कर सकता जबकि ऐसे निष्कर्ष स्वेच्छाचारिता के आधार पर अथवा विपरीत न हो। 1999(001) एल.एल.जे., 1229 पर प्रकाशित मामले में यह अभिनिर्धारित किया गया है कि सधारणतया न्यायाधिकरण अनुशासनिक प्राधिकारी के द्वारा दिए गए दण्ड के स्थान पर दूसरा दण्ड प्रतिस्थापित नहीं कर सकता है। 1998(002) एल.एल.जे. -0629-एस.सी. के मामले में यह अभिनिर्धारित किया गया है कि प्रशासनिक न्यायाधिकरण को जांच अधिकारी के निष्कर्षों को जब तक हस्तक्षेप करने का अधिकार नहीं है जब तक कि निष्कर्षों के समर्थन में जांच अधिकारी के समर्थन में कोई साक्ष्य न हो व अधिकरण को दण्ड की मात्रा में हस्तक्षेप करने का औचित्य नहीं था। यह अनुशासनिक प्राधिकारी को विचार करना होता है कि क्या दण्ड दिया जाए? 1996 ए.आई.आर. (एस.सी.) पृष्ठ 484 पर प्रकाशित मामले में भी यही मत व्यक्त किया गया है कि अधिकरण न्यायिक पुनर्विलोकन की शक्तियों के अधीन बनौर अपीलीय प्राधिकारी के साक्ष्य पर पुनः विचार नहीं कर सकता। अधिकरण तभी तथ्यात्मक निष्कर्षों के बारे में हस्तक्षेप कर सकता है जबकि निष्कर्ष ऐसे हो कि कोई भी व्यक्ति ऐसे निष्कर्ष पर नहीं पहुंच सकता था। उक्त मामले में यह भी अभिनिर्धारित किया गया कि:—

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India vs. H. C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

ऐसा ही मत 1999(5) एम.सी.सी. 762 बैंक ऑफ इण्डिया बनाम डेगला सत्यनारायण के मामले में व्यक्त किया गया है। 1998 एस.सी.सी. (एल.एण्ड एस.) 316-बी इंसेक्विंग अमिस्टेट कमिशनर बनाम शरत्नारायण के मामले में अभिनिर्धारित किया गया है कि न्यायालय दण्ड के प्रश्न पर विचार नहीं कर सकता जब तक कि दण्ड ऐसा न हो कि कोई विवेकशील व्यक्ति ऐसा दण्ड नहीं देता।

इस प्रकार उक्त न्याय दृष्टान्तों को दृष्टिगत रखते हुए इस विधिक स्थिति के बारे में कोई विवाद नहीं रहता कि इस अधिकरण का क्षेत्राधिकार अपीलीय प्राधिकारी के क्षेत्राधिकार के समान नहीं है व जांच अधिकारी अथवा सक्षम अधिकारी के द्वारा निकाले गए निष्कर्षों में अधिकरण तभी हस्तक्षेप कर सकता है जबकि ऐसे निष्कर्षों के समर्थन में साक्ष्य न हो अथवा निष्कर्ष साक्ष्य के विपरीत हो। दण्ड की मात्रा में भी अधिकरण तभी हस्तक्षेप कर सकता है कि जब अनुशासनिक अधिकारी अथवा अपीलीय प्राधिकारी के द्वारा दिया गया दण्ड ऐसा हो कि कोई भी विवेकशील व्यक्ति ऐसा दण्ड नहीं दे सकता था। उक्त विधिक स्थिति को दृष्टिगत रखते हुए पक्षकारों के विज्ञान प्रतिनिधियों के द्वारा दिए गए तर्क व जांच अधिकारी के द्वारा निकाले गए निष्कर्ष व दण्ड की मात्रा के बारे में विचार किया जाएगा।

इस बारे में कोई विवाद नहीं है कि प्रार्थी यूनियन का मुख्य सचिव था। इस बारे में भी कोई विवाद नहीं है कि बैंक की शाखा, जयपुर के प्रबन्धक ने मुद्रा परीक्षण विभाग-चतुर्थ को बंद करने का निर्णय लिया जिससे व्यथित होकर एणोसिगेशन व यूनियन के द्वारा संयुक्त रूप से संघर्ष किया गया। आरोप संख्या-1 प्रार्थी के विरुद्ध स्वयं जांच अधिकारी के द्वारा इस सीमा तक प्रमाणित पाया गया है कि उसने अन्य कर्मचारियों के साथ दिनांक 21-12-94 को अपराह्न 2.25 बजे विद्युत सब स्टेशन परिचर वेदप्रकाश सिंह पर दबाव डालकर विद्युत आपूर्ति बंद करवा दी। उक्त आरोप के बारे में नियोजक की ओर से साक्षी संख्या-1 जी.जी. बनसोड़े, सहायक अभियन्ता (वि.), साक्षी संख्या-2 वेद प्रकाश सिंह, सब स्टेशन परिचर, साक्षी संख्या-3 निर्मलचंद सहायक लेखाधिकारी व साक्षी संख्या-4 श्री के.रघु, सहायक

अभियन्ता (मिविल) के बयान कारण गए व प्रलेखीय साक्ष्य में रिपोर्ट प्रदर्श एम-1 और एम-2 प्रस्तुत की गई। जी.जी. बनसोड़े का कथन है कि दिनांक 21-12-94 को बिजली की सप्लाई लगभग 12.30 बजे बंद हो गई। उसने ऐसा लगा कि राजस्थान राज्य विद्युत मण्डल में सप्लाई बंद हो गई है। इस पर सम्पर्क करने पर ज्ञात हुआ कि बैंक का सप्लाई फीडर ऑन था। सब स्टेशन पर गया तो वहां परिचर नहीं था। सब स्टेशन परिचर वेदप्रकाश सिंह से पूछा कि सप्लाई क्यों बंद हुई तो उसने बताया कि यूनियन के सारे व्यक्ति संख्या में लगभग 20-30 सप्लाई बंद कराने के लिए जबरदस्ती की व वे अंदर घुस गए। इस पर उसने वेदप्रकाश सिंह से स्विच ऑन करने के लिए कहा। लगभग 2.25 बजे उसने सप्लाई बंद की व लगभग 10 मिनट में सप्लाई बंद हो गई। उसने वेद प्रकाश सिंह (साक्षी संख्या-2) को पुनः बुलाया व सप्लाई बंद करने का कारण पूछा, जिस पर उसने बताया कि प्रार्थी व ओम सिंह दोनों ने उससे जबरदस्ती सप्लाई बंद करवाई। इस पर उसने लिखकर देने को कहा। इस पर उसने लिखकर दिया और उसी समय प्रार्थी व उसके साथी लगभग 2.30 बजे उसके पास आ गए व प्रार्थी ने चिल्लाकर कहा कि कोई भी आदमी स्विच ऑन नहीं करेगा। उस समय निर्मलचंद, संपदा विभाग के सहायक लेखाधिकारी (साक्षी संख्या-3) व डी.के. रघु (साक्षी संख्या-4) उपस्थित थे। उसी समय प्रार्थी वेदप्रकाश सिंह को वहां से खींचकर ले गया। उसके बयान का समर्थन उसके द्वारा दी गई रिपोर्ट दिनांक 21-12-94 से होता है। वेदप्रकाश सिंह, सब स्टेशन, परिचर (साक्षी संख्या-2) का कथन है कि उसकी झूठी सब स्टेशन पर थी व वह पावर कंट्रोल पर नियंत्रण रखता था। दिनांक 21 दिसम्बर को स्थानीय कार्यालय में यूनियन व एणोसिगेशन के व्यक्ति 11.00 व 12.00 बजे के बीच आए। उन्होंने उसका घेराव कर लिया व बिजली सप्लाई बंद करने के लिए कहा इस पर उसे बिजली बंद करनी पड़ी। बिजली पुनः 2.25 के बीच में चालू हुई। संगठन के लोगों ने उसे दुबारा पकड़ा व बिजली बंद करवाई। उसने कहा कि एणोसिगेशन व यूनियन के जो व्यक्ति थे उनके नाम वह नहीं जानता। उसने स्वीकार किया कि रिपोर्ट प्रदर्श एम-2 पर उसके हस्ताक्षर हैं, जो उसने बनसोड़े को 2.00 व 2.30 बजे के बीच दी थी। इसके बाद उपप्रबन्धक का फोन आया व जोर देकर उन्होंने कहा कि संगठन के कौन-कौन व्यक्ति आए थे। उनके नाम लिखकर दो। फिर उप प्रबन्धक ने जबरदस्ती प्रार्थी व ओमप्रकाश सिंह के नाम लिखकर देने को कहा। पुनः बिजली 2.45 बजे चालू की। निर्मलचंद, सहायक लेखाधिकारी (साक्षी संख्या-3) का कथन है कि दिनांक 21-12-94 को 12.30 बजे बिजली सप्लाई बंद हो गई। 2.30 बजे दुबारा पावर सप्लाई शुरू हुई। फिर 10 मिनट के बाद दुबारा पावर सप्लाई बंद हो गई। बाद में पता चला कि सब स्टेशन, परिचर वेदप्रकाश सिंह को जबरदस्ती पकड़कर यूनियन के लोगों ने पावर सप्लाई बंद करवा दी। वेद प्रकाश सिंह ने रिपोर्ट दी थी कि प्रार्थी व उसके साथियों ने उसे सप्लाई बंद करने के लिए कहा था।

रिपोर्ट में यह भी कहा था कि यूनिन के सदस्य पावर चालू नहीं करेंगे। प्रार्थी व अन्य 7-8 उसके साथी वेदप्रकाश सिंह को पकड़ ले गए थे। वेदप्रकाश सिंह के द्वारा जो रिपोर्ट दी गई थी, उसके लिए कोई दबाव नहीं डाला गया। वेदप्रकाश सिंह ने मौखिक भी कहा था और लिखित में भी दिया था। डी.के. रघु, सहायक अभियन्ता (मिविल) (साक्षी संख्या-4) का कथन है कि दिनांक 21-12-94 को 12.30 बजे से 2.25 बजे तक बिजली 10 मिनट तक बुबारा आई और फिर चली गई और फिर पौने चार बजे आई।

प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी दिनांक 21-12-94 को अवकाश पर था व उस दिन फोन किए जाने पर बैंक में वह 3.00 बजे आया। इस प्रकार प्रार्थी के विरुद्ध लगाए गए आरोप कि उसने वेदप्रकाश सिंह पर दबाव डालकर विद्युत आपूर्ति बंद करवा दी, प्रमाणित नहीं होता। उन्होंने इस संदर्भ में प्रतिरक्षा में प्रस्तुत किए गए साक्षियों के कथन पर एवं लॉग बुक प्रदर्श डी-10 की ओर ध्यान आकृष्ट किया है। उनका यह भी तर्क है कि वेदप्रकाश सिंह के कथन के आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि बिजली आपूर्ति प्रार्थी ने बंद कराई। जांच अधिकारी ने प्रतिपरीक्षा में प्रस्तुत किए गए साक्षीगण आर.पी. गुप्ता (साक्षी संख्या-1), रमेश यादव (साक्षी संख्या-2), गिरधर गोपाल (साक्षी संख्या 4), हरिनारायण (साक्षी संख्या-5) के कथनों पर विचार किया व विचार करने के पश्चात इस निष्कर्ष पर पहुंचा कि प्रार्थी दिनांक 21-12-94 को यद्यपि अवकाश पर था परन्तु ढाई बजे पुनः बिजली बंद होने के समय तक था। यह भी निष्कर्ष निकाला गया कि बिजली प्रार्थी के दबाव पर बंद की गई। वेदप्रकाश सिंह ने रिपोर्ट प्रदर्श एम-2 प्रस्तुत करना स्वीकार किया है, जिसमें उसके द्वारा उल्लेख किया गया है कि सहायक अभियन्ता ने लाइट चालू करने को कहा इस पर उसने फौरन लाइट चालू कर दी और वहाँ ओमसिंह व प्रार्थी ने आकर फौरन लाइट बंद करा दी, उसने आकर इस बाबत रिपोर्ट दे दी। वेदप्रकाश सिंह का यह कथन कि रिपोर्ट में उप प्रबन्धक के द्वारा दबाव देने पर प्रार्थी व ओमसिंह के नाम लिखे पर विश्वास नहीं किया जा सकता जबकि उसने स्वीकार किया है कि रिपोर्ट प्रदर्श एम-2 उसने जी.जी. बंसाडे, सहायक अभियन्ता को दो से ढाई बजे के बीच दे दी थी। उसने कहा है कि रिपोर्ट देने के बाद उप प्रबन्धक के जोर देने पर रिपोर्ट में नाम लिखे थे जबकि रिपोर्ट उसने पूर्व में ही दे दी थी। अतः उप प्रबन्धक के द्वारा जोर देने पर प्रार्थी व ओमसिंह का नाम लिखकर देने का प्रश्न ही उत्पन्न नहीं होता। इसके अतिरिक्त जी.जी. बंसाडे व निर्मलचंद का यह कथन है कि वेदप्रकाश सिंह ने यह कहा था कि ओमसिंह व प्रार्थी ने बिजली बंद करवाई। यद्यपि प्रार्थी की ओर से प्रस्तुत किए गए साक्षियों ने प्रार्थी का दिनांक 21-12-94 को अपराह्न 3.00 बजे से पूर्व उपस्थित नहीं आ कहा है, परन्तु प्रबन्धन की ओर से इस बारे में पर्याप्त और

विश्वसनीय साक्ष्य प्रस्तुत की गई है कि प्रार्थी उस दिन लगभग ढाई बजे बैंक में उपस्थित था। प्रार्थी ने बिजली आपूर्ति चालू नहीं करने के लिए कहा। प्रार्थी के इस आचरण से कि उसने बिजली आपूर्ति चालू नहीं करने के लिए कहा इस तथ्य की पुष्टि होती है कि उसने बैंक में बिजली आपूर्ति दिनांक 21-12-94 को अपराह्न लगभग ढाई बजे बंद कराई। यद्यपि ओमसिंह प्रतिरक्षा साक्षी संख्या-3 ने प्रार्थी के साथ बिजली आपूर्ति बंद नहीं कराने को कहा है, परन्तु वह प्रार्थी के विरुद्ध ऐसी साक्ष्य क्यों देने लगा जबकि उसके विरुद्ध भी ऐसा ही आरोप था। स्टेशन लॉग बक सब स्टेशन परिचर के द्वारा तयार की जाती थी, जिसमें यह लिखा है कि बिजली सप्ताई 11.30 बजे बंद हुई व पौने चार बजे पुनः चालू की गई। इस बारे में जी.जी. बंसाडे, सहायक अभियन्ता का कथन है कि बिजली आपूर्ति साढ़े बारह बजे बंद की गई थी व पौने चार पुनः आपूर्ति चालू की गई थी। लॉग बुक के अनुसार दिनांक 21-12-94 को बिजली आपूर्ति बंद नहीं हुई। यह उल्लेख करना उचित होगा कि प्रदर्श डी-10 पर वेद प्रकाश सिंह के द्वारा यह उल्लेख किया गया है कि साढ़े बारह ए.एम. पर सप्ताई बंद हुई व पौने चार बजे चालू हुई। समय पहले से ही डाला गया था। इस प्रकार लॉग बुक वास्तविक तथ्यों के आधार पर आधारित नहीं है व इससे यह निष्कर्ष नहीं निकाला जा सकता कि बिजली आपूर्ति बंद नहीं हुई व साढ़े बारह बजे के बाद बिजली आपूर्ति चालू नहीं की गई। प्रार्थी के विद्वान प्रतिनिधि का यह भी तर्क है कि जांच अधिकारी ने प्रतिरक्षा में प्रस्तुत साक्षीगण के कथनों पर विश्वास करने के बारे में कोई कारण नहीं बताया। यह उल्लेख करना उचित होगा कि प्रबन्धन के द्वारा प्रस्तुत की गई मौखिक साक्ष्य का सनर्थन प्रमेयनीय साक्ष्य से भी होता है व ऐसी स्थिति में प्रबन्धन के द्वारा प्रस्तुत किए गए साक्षियों पर विश्वास कर जांच अधिकारी के द्वारा निकाले गए निष्कर्षों में कोई त्रुटि प्रतीत नहीं होती। प्रार्थी के विद्वान प्रतिनिधि के द्वारा यह भी तर्क दिया गया है कि रिपोर्ट प्रदर्श एम-1 व एम-2 पर कोई पृष्ठार्कन नहीं है व इस प्रकार की रिपोर्ट कभी भी तैयार की जा सकती है। रिपोर्ट प्रदर्श एम-1 व एम-2 उच्च अधिकारियों को पृष्ठार्कित की गई है। यह आवश्यक नहीं है कि अंतिम स्तर तक उन रिपोर्टों पर ही कार्यवाही चलती रहे। उन रिपोर्टों के आधार पर प्रार्थी को आरोपित किया गया है व यह नहीं कहा जा सकता कि प्रबन्धन के द्वारा जान-बूझकर फर्जी रिपोर्ट तैयार की गई है। इस प्रकार प्रार्थी के विरुद्ध दिनांक 21-12-94 को अपराह्न लगभग 2.25 बजे अन्य कर्मचारियों के साथ वेदप्रकाश सिंह विद्युत सब स्टेशन परिचर पर दबाव डालकर विद्युत आपूर्ति बंद कराने के आरोप के बारे में पर्याप्त व विश्वसनीय साक्ष्य अभिलेख पर है व उक्त आरोप संख्या-1 प्रार्थी के विरुद्ध इस सीमा तक प्रमाणित होता है।

प्रार्थी के विरुद्ध दूसरा आरोप दिनांक 22-12-94 को प्रातः लगभग पौने दस बजे एवं उसके 10-15 मिनट पश्चात

एन.के. झंवर, स्टाफ आफीसर एवं मदनलाल, मुद्रा अधिकारी को भड़की गालियां देने व एन. के. झंवर को पीटने की धमकी देने के बारे में है, जो कि जांच अधिकारी ने जांच के आधार पर प्रमाणित पाया। प्रबन्धन के साक्षी एन. के. झंवर (साक्षी संख्या-5) का कथन है कि दिनांक 22-12-94 को वह निर्गम विभाग के सहायक प्रबन्धक के पद पर कार्य कर रहा था। प्रार्थी द्वारा उसके साथ गाली-गलौच की गई। गाली-गलौच होने के समय मदनलाल मुद्रा अधिकारी आए, उसके साथ भी प्रार्थी ने गाली-गलौच की। प्रार्थी ने उसे "मादरचौद" कहा और कहा कि 'अभी हम तुमको पीटते हैं और यह भी कहा कि साले तुम मैनेजमेंट के चमचे हो, अभी हम तुम्हें पीट देंगे'। गाली-गलौच का कारण यह था कि उस दिन कुछ चतुर्थ श्रेणी कर्मचारियों ने उपस्थिति पंजिका में उपस्थिति दर्ज की थी। प्रार्थी ने बिना पूछे उपस्थिति रजिस्टर लेकर अपने कर्मचारियों की उपस्थिति चेकी। लक्ष्मीकांत मिश्रा जो कि उस वक्त खड़ा था उसने उपस्थिति दर्ज की गई उसे हाथ पकड़कर प्रार्थी ले जाने लगा इस पर उसने कहा कि उससे जोर-जबरदस्ती न करें। इस पर प्रार्थी ने गाली-गलौच शुरू कर दी। उसने इस बारे में शिकायत प्रदर्श एम-3 प्रस्तुत की। प्रार्थी के मुंह से शराब की बदबू आ रही थी। उसका कथन है कि "मदनलाल को भी मादरचौद, साले आदि की गालियां दी। शिकायत प्रदर्श एम-3 से उसके कथन का समर्थन होता है, जिस शिकायत में उल्लेख किया गया है कि मादरचौद की गालियां दी, मादरचौद साले की गालियां दी, पीटने की धमकी दी। मदनलाल, सहायक मुद्रा अधिकारी (साक्षी संख्या-6) ने एन. के. झंवर का समर्थन करते हुए अपना बयान दिया है। उसका यह भी कथन है कि दिनांक 22-12-94 को प्रातः पाँचे दस बजे मदनलाल को "बहनचौद, मादरचौद आदि की गालियां दी" व तत्पश्चात् उसी दिन सवा बारह बजे मदनलाल को "बहनचौद, मादरचौद आदि की गालियां दी" व तत्पश्चात् उसी दिन सवा बारह बजे मदनलाल को "बहनचौद, मादरचौद" की गालियां दी। एस. एन. तुली, उप महा-प्रबंधक (साक्षी संख्या-7) ने भी एन. के. झंवर के कथन का समर्थन किया है व झंवर व मदनलाल को प्रार्थी के द्वारा गालियां देना कहा है। झंवर को "साले तुम मैनेजमेंट के आदमी हो, तुम मादरचौद हो, हम तुम्हें पीट देंगे व मदनलाल को "मादरचौद की गालियां देना कहा। मदनलाल, मुद्रा अधिकारी (साक्षी संख्या-12) का कथन है कि दिनांक 22-12-94 को प्रातः 9.45 बजे जब वह अपनी केबिन में बैठा हुआ था तो शोर सुनकर बाहर निकला व देखा कि प्रार्थी जोर-जोर से चिल्ला रहा था इस पर उसने रोकने की चेष्टा की जिस पर वह उसे गालियां देने लगा। प्रार्थी ने उसे "मादरचौद" कहा। एन. के. झंवर को "मादरचौद, साले, मैनेजमेंट के चमचे" कहा और यह भी कहा कि तुमको हम बाहर पीट देंगे। दूसरी ओर प्रार्थी की ओर से प्रतिपरीक्षा साक्ष्य में आर. पी. गुप्ता (साक्षी संख्या-1) का कथन है कि प्रार्थी व मुद्रा अधिकारी के बीच किसी प्रकार का वाद-विवाद नहीं हुआ। रमेण यादव प्रतिपरीक्षा (साक्षी संख्या-

-2), गिरधर गोपाल शर्मा प्रतिपरीक्षा (साक्षी संख्या-4) ने भी मुद्रा अधिकारी व प्रार्थी के बीच कोई झगड़ा न होना कहा है। हरिनारायण यादव प्रतिपरीक्षा (साक्षी संख्या-5) का भी कथन है कि प्रार्थी व मदनलाल व झंवर के बीच कोई कहावुनी नहीं हुई। ऐसा ही कथन मदननारायण शर्मा प्रतिपरीक्षा (साक्षी संख्या-6) ने दिया है। भवर सिंह राठौड़ प्रतिपरीक्षा (साक्षी संख्या-8), बी. एन. एम. राजावत प्रतिपरीक्षा (साक्षी संख्या-9), भगवान सहायक शर्मा प्रतिपरीक्षा (साक्षी संख्या-10) का भी ऐसा ही कथन है।

प्रार्थी के विद्वान प्रतिनिधि ने तर्क दिया है कि लक्ष्मीकांत मिश्रा जिसे कि प्रार्थी के द्वारा जबरन बैंक की शाखा से ले जाना बताया जाता है उसे साक्ष्य में प्रस्तुत नहीं किया गया। कार्मिक अधिकारी व सिक्योरिटी अधिकारी जो कि सुसंगत साक्षी हो सकते थे, उन्हें भी प्रस्तुत नहीं किया गया। मदनलाल ऐसा साक्षी है जिसके विरुद्ध प्रार्थी ने कई शिकायतें की थी, अतः उसका प्रार्थी से डेप रखना स्वाभाविक है व इस कारण उसके कथन पर विश्वास नहीं किया जाना चाहिए था। घटना के समय के बारे में रिपोर्ट प्रदर्श एम-3 व एम-5 में विरोधाभास है। प्रतिपरीक्षा में प्रस्तुत किए गए साक्षियों के कथन पर क्यों नहीं भरोसा किया जाए? इसका कोई आधार जांच अधिकारी ने नहीं बताया। उनका तर्क है कि ऐसी दशा में प्रार्थी के विरुद्ध लगाए गए आरोप प्रमाणित नहीं होते। दूसरी ओर अप्रार्थी के विद्वान प्रतिनिधि का तर्क है कि यह प्रबन्धन के विवेक पर निर्भर करता है कि कितने साक्षियों को साक्ष्य में प्रस्तुत किया जाए। उनका यह भी तर्क है कि केवल मात्र इस कारण से कि प्रार्थी ने मदनलाल, मुद्रा अधिकारी के विरुद्ध शिकायत की थी उसके कथन पर अविश्वास नहीं किया जा सकता जबकि उसके बयान का समर्थन अन्य साक्षियों के कथनों से होता है। उनका यह भी तर्क है कि घटना के समय के बारे में रिपोर्ट प्रदर्श एम-3 व एम-5 में कोई विरोधाभास नहीं है। यह प्रबन्धन के विवेक पर निर्भर करता है कि कितने साक्षियों को साक्ष्य में प्रस्तुत करें। यदि किसी साक्षी के प्रस्तुत न किए जाने का प्रभाव यह होता है कि प्रबन्धन द्वारा प्रस्तुत की गई साक्ष्य पर विश्वास नहीं किया किया जा सके तो ऐसे साक्षी को प्रस्तुत न करने से प्रबन्धन के विरुद्ध निष्कर्ष निकाला जा सकता है। मेरी राय में लक्ष्मीकांत मिश्रा, कार्मिक अधिकारी व सिक्योरिटी अधिकारी को साक्ष्य में प्रस्तुत न किए जाने से प्रबन्धन के द्वारा प्रस्तुत किए गए साक्षियों के कथनों पर अविश्वास नहीं किया जा सकता। प्रदर्श एम-3 में एन. के. झंवर के द्वारा उसके साथ घटित घटना का समय लगभग पाँचे दस बजे होने का उल्लेख किया गया है। रिपोर्ट प्रदर्श एम-6 जो कि मदनलाल के द्वारा प्रस्तुत की गई है, जिसमें उसके साथ घटित घटना का समय दिनांक 22-12-94 को अपराह्न 12 बजकर 10 मिनट पर बताया गया है। यह भी उल्लेख करना उचित होगा कि इससे पूर्व मदनलाल के द्वारा रिपोर्ट प्रदर्श एम-5 प्रस्तुत की गई है जिसमें प्रार्थी के द्वारा दिनांक 22-12-94 को प्रातः 9.45 बजे प्रार्थी के द्वारा एन. के. झंवर पर जोर से चिल्लाने व उसके साथ गाली-गलौच करने व मारपीट

करने की धमकी देने व उसके द्वारा मना करने पर उसे भी गाली देने का उल्लेख किया गया है। इसके पश्चात् पुनः 10-15 मिनट के पश्चात् प्रार्थी द्वारा गाली-गलौच व धमकी देने का उल्लेख किया गया है। यह भी उल्लेख करना उचित होगा कि रिपोर्ट प्रदर्श एम-4 में भी एक दूसरी घटना घटित होने का समय 10.00 बजे का होने का उल्लेख किया गया है। यह उल्लेख करना उचित होगा कि रिपोर्ट में समय लगभग होने का उल्लेख किया गया है। ऐसी दशा में घटना के समय के बारे में कोई महत्वपूर्ण विरोध प्रतीत नहीं होता। इस बारे में कोई विवाद नहीं है कि मदनलाल के विरुद्ध प्रार्थी ने शिकायत की थी परन्तु केवल इस कारण से ही उसके कथन पर अविश्वास नहीं किया जा सकता परन्तु जबकि उसके कथन का समर्थन प्रबन्धन के द्वारा प्रस्तुत अन्य साक्षियों के कथनों से व प्रार्थी के विरुद्ध की गई शिकायतों में होता है। केवल मात्र इस कारण से कि प्रार्थी अपनी सूनिधन व एगोसिएशन के साथ संयुक्त रूप में मिलकर मुद्रा परीक्षण अनुभाग, चतुर्थ को बंद किए जाने का विरोध कर रहा था, यह निष्कर्ष नहीं निकाला जा सकता कि प्रबन्धन के अधिकारियों के द्वारा प्रार्थी के विरुद्ध झूठी साक्ष्य प्रस्तुत की गई व अधिकारियों में झूठी रिपोर्ट प्राप्त की गई। प्रबन्धन द्वारा प्रस्तुत साक्षियों के कथन का समर्थन प्रार्थी के विरुद्ध की गई शिकायतों में भी होता है व उनका विश्वसनीय होना प्रतीत होता है। प्रतिरक्षा साक्ष्य में प्रस्तुत किए गए साक्षियों के कथन कि प्रार्थी व मदनलाल, मुद्रा अधिकारी व एन.के. शंकर के बीच कोई झगड़ा नहीं हुआ व प्रार्थी ने उनके साथ कोई गाली-गलौच अथवा मारपीट करने की धमकी नहीं दी, कथनों पर विश्वास नहीं किया जा सकता। इस प्रकार प्रार्थी के विरुद्ध आरोप संख्या-2 के प्रमाणित होने के बारे में पर्याप्त व विश्वसनीय साक्ष्य अभिलेख पर है।

आरोप संख्या-3 प्रार्थी के द्वारा नशे की हालत में दिनांक 22-12-94 को प्रातः 10.00 बजे अपनी मांग के समर्थन में नारा लगाते हुए महाप्रबंधक के कमरे में जबरन प्रवेश करने, कर्मचारियों को उकसाने, प्रबंधक की मेज पर चढ़कर मुद्रा परीक्षण अनुभाग के पुराने सिस्टम को लागू करने, प्रबंधक व अन्य अधिकारियों को मारने-पीटने की धमकी देने के बारे में है। इस आरोप के समर्थन में प्रबन्धन की ओर से बी.एस. शर्मा, उपमहाप्रबंधक (साक्षी संख्या-8) का कथन है कि दिनांक 22-12-94 को तृतीय व चतुर्थ श्रेणी कर्मचारियों ने हड़ताल का आह्वान किया था, जिसके अन्तर्गत प्रातः 10.00 बजे तृतीय व चतुर्थ श्रेणी कर्मचारियों के लगभग 100 सदस्य प्रबंधक के कक्ष में घुसकर नारेबाजी शुरू की। कर्मचारी तोट परीक्षण अनुभाग में पूर्व की स्थिति बहाल करने की मांग कर रहे थे। कर्मचारियों ने प्रबंधक कक्ष की बलियां बंद कर दी। प्रदर्शन में मुख्य भूमिका प्रार्थी की थी। प्रार्थी ने प्रबंधक से मांग की कि वे केन्द्रीय कार्यालय से कर्मचारियों के सामने ही बात की जाए, जिस पर प्रबंधक ने मना कर दिया। इस पर प्रार्थी क्रुद्ध होकर प्रबंधक की मेज पर चढ़ गया व कर्मचारियों को सम्बोधित करते कहा "साथियों मैं वह काम

करने जा रहा हूं जिसके अंजाम की मुझे परवाह नहीं है" इतना कहकर प्रबंधक और उनके साथ जो विभागाध्यक्ष खड़े हुए थे उनकी ओर झुकने की कोशिश की, इस पर कर्मचारी नेताओं ने प्रार्थी को मेज से नीचे उतारा। स्थिति को शांत करने की नियत मे एगोसिएशन के कुछ पदाधिकारियों ने प्रबंधक से केन्द्रीय कार्यालय टेलीफोन में बात करने का अनुरोध किया, जिसे प्रबंधक ने मान लिया। कुछ समय पश्चात् सभी कर्मचारी उनके कक्ष के सन्मुख एकत्रित हो गए। यह सारी कार्यवाही चल रही थी कि लगभग 1.00 बजे प्रार्थी दरवाजा खोकर नीचे आया व धमकी दी कि "चतुर्थ अनुभाग बहाल नहीं हुआ तो हम तुमको सबको मारेंगे"। लगभग डेढ़ पौने दो बजे जब स्थिति काफी उप हो गई तब प्रबंधक के इस आग्रहमान के बाद कि यथा स्थिति बनाई रखी जाएगी, कर्मचारी चले गए। वह निश्चित रूप से यह नहीं कह सकता कि प्रार्थी उस समय शराब के नशे में था। एच. एन. प्रसाद (साक्षी संख्या-9) ने बी.एस. शर्मा के कथन का समर्थन करते हुए बयान दिया है। उसका कथन है कि प्रार्थी उससे तीन फीट की दूरी पर था व ऐसा लगता था कि शराब पीए हुए हैं। उसका कथन है कि प्रार्थी के मुंह से बदबू नहीं आ रही थी। बी.एस. मन्देवा (साक्षी संख्या 10) ने भी बी.एस. शर्मा के कथन का समर्थन करते हुए कथन किया है। उसका कथन है कि शायद प्रार्थी ने दाखू पी रखी थी। उसका कथन है कि उमने प्रार्थी को शराब पीते हुए नहीं देखा व वह बाहर था इसलिए शराब की बदबू नहीं आ सकती थी। डी.पी. मारड़ा (साक्षी संख्या-11) ने भी बी.एस. शर्मा, के कथन का समर्थन करते हुए बयान किया है। उसका भी कथन है कि प्रार्थी शराब पीए हुए था, ऐसा महसूस किया गया था, निश्चित रूप से नहीं कह सकता। प्रबंधक की ओर से रिपोर्ट प्रदर्श एम-4 भी प्रस्तुत की गई है जिस पर बी.एस. शर्मा, एच. एन. प्रसाद, बी.एस. मन्देवा व डी. पी. मारड़ा व अन्य के हस्ताक्षर हैं, जिसके आधार पर प्रार्थी को उक्त आरोप से आरोपित किया गया है। दूसरी ओर विपक्षी की ओर से प्रतिरक्षा साक्ष्य में आर.पी. गुप्ता (साक्षी संख्या-1) का कथन है कि प्रबंधक कक्ष के बाहर लगभग 75 से 100 के बीच में सदस्य उपस्थित होंगे। प्रबंधक कक्ष का दरवाजा खुला था। वे प्रबंधक को बाहर बतचित करने के लिए कह रहे थे व जब प्रबंधक बाहर नहीं आए तभी मजबूर होकर उनके कक्ष में गए थे। उन्होंने अनुरोध किया कि वे अपने निर्णय मुद्रा परीक्षण अनुभाग को बंद करने के निर्णय को स्थगित कर दे, उस समय प्रार्थी उनके साथ था। वह कुर्सी पर खड़ा था। प्रार्थी मेंटर टेबल पर खड़ा था। उसके बाद प्रबंधक सहमत हो गए कि केन्द्रीय कार्यालय में बतचित करेंगे। इस पर वे उप प्रबंधक के कक्ष में चले गए। प्रार्थी की किसी भी अधिकारी से कोई बाद विवाद नहीं हुआ। लगभग एक सवा बजे प्रबंधक अपने निर्णय को स्थगित करने पर सहमत हो गए। प्रार्थी ने प्रबंधक कक्ष में किसी तरह का कोई अभद्र व्यवहार नहीं किया व न अमानित शब्दों का प्रयोग किया व न मारने पीटने व धमकाने की बात कही।

रमेश यादव (साक्षी संख्या-2) गिरधर गोपाल शर्मा (साक्षी संख्या-4) हरिनारायण यादव (साक्षी संख्या-5) एस.

डॉ. खामपुरिया (साक्षी संख्या-7) भंवर सिंह राठौड़ (साक्षी संख्या-8), बी. एन. एस. राजावत (साक्षी संख्या-9) ने भी आर. पी. गुप्ता के उक्त कथन का समर्थन करने हुए अपने कथन दिए हैं। यह उल्लेख करना उचित होगा कि प्रार्थी की प्रबन्धन के द्वारा प्रस्तुत उक्त साक्षियों में कोई व्यक्तिगत वैयक्तिकता होना नहीं बताया जाता। ऐसी दशा में वे प्रार्थी के विरुद्ध क्यों झूठी साक्ष्य देंगे। प्रबंधक के द्वारा प्रस्तुत साक्षियों के कथन का समर्थन रिपोर्ट प्रदर्श एम-4 से भी होता है। यह तो प्रार्थी की ओर से भी स्वीकार किया गया है कि उसने अन्य कर्मचारियों के साथ प्रबंधक के कक्ष में प्रवेश किया व मेज पर चढ़ा। इस बारे में कि प्रार्थी ने शाखा प्रबन्धन व अन्य अधिकारियों को चिल्लाकर कहा कि “दोस्तों मैं अब वह काम करने जा रहा हूँ जिसे अन्जाम की मुझे परवाह नहीं है।” व प्रार्थी प्रबंधक व अन्य अधिकारियों को यह कहकर उत्तरी ओर झुका, इस बारे में विश्वसनीय साक्ष्य अलिखित पर है। प्रार्थी के विद्वान् अधिवक्ता का तर्क है कि प्रबंधक को साक्ष्य में प्रस्तुत नहीं किया गया व अन्य कर्मचारी जो भी प्रार्थी के साथ आन्दोलन में सक्रिय थे, उनको भी आरोपित नहीं किया गया। ऐसी दशा में यह निष्कर्ष निकाला जाना चाहिए कि प्रार्थी को झूठा पंसाया गया है। प्रबंधक को साक्ष्य में प्रस्तुत न किए जाने से प्रबन्धन के द्वारा प्रस्तुत किए गए साक्षियों के कथन अविश्वसनीय नहीं हो जाते। अन्य कर्मचारी जो कि प्रार्थी के साथ आन्दोलन में सक्रिय थे, उनके आरोपित न किए जाने से भी यह नहीं कहा जा सकता कि प्रार्थी को झूठा आरोपित किया गया है। ऐसी परिस्थितियों में प्रतिरक्षा में प्रस्तुत किए गए साक्षियों के कथन पर कि प्रार्थी ने उक्त कृत्य नहीं किए पर विश्वास करना कठिन है। यह उल्लेख करना उचित होगा कि प्रार्थी के विरुद्ध आरोप संख्या-3 में यह भी आरोप लगाया गया है कि वह शराब पीए हुए था। ऊपर जैसा उल्लेख किया जा चुका है इस बारे में प्रबंधन की ओर से प्रस्तुत की गई साक्ष्य में किसी ने भी यह नहीं कहा कि प्रार्थी शराब पीए हुए था व उसके मुँह से शराब की बदबू आ रही थी। इस प्रकार प्रार्थी के विरुद्ध आरोप संख्या-3 में लगाया गया यह आरोप कि प्रार्थी उक्त घटना के समय शराब पीए हुए था, प्रमाणित नहीं होता। इस आरोप में लगाए गए शेष आरोप प्रार्थी के विरुद्ध प्रमाणित होते हैं।

दण्ड की सजा के बारे में प्रार्थी के विद्वान् प्रतिनिधि का तर्क है कि प्रार्थी को दण्डित करने से पूर्व प्रार्थी के पिछले सेवा रिकार्ड का अवलोकन किया गया है। इस बारे में प्रार्थी को सुनवाई का कोई अवसर नहीं दिया गया। यह उल्लेख करना उचित होगा कि प्रार्थी को दण्ड दिए जाने से पूर्व प्रार्थी को सुनवाई का अवसर दिया गया था, जिसमें प्रार्थी के पिछले सेवा रिकार्ड का उल्लेख किया गया था। प्रार्थी ने इस वास्तव जवाब भी सक्षम अधिकारी के समक्ष प्रस्तुत किया था। अतः प्रार्थी के विद्वान् प्रतिनिधि के उक्त तर्क में कोई सार प्रतीत नहीं होता। प्रार्थी को यह मानते हुए कि प्रार्थी के विरुद्ध आरोप संख्या-1 आशित रूप से व व 3 पूर्ण रूप से प्रमाणित होते हैं, दण्डित किया गया

है। उच्चतम न्यायालय के न्याय दृष्टान्तों को दृष्टिगत रखते हुए यदि प्रार्थी के विरुद्ध यदि उक्त तीनों ही आरोप उक्त प्रकार से प्रमाणित होते तो दण्डादेश में हस्तक्षेप किए जाने का कोई औचित्य नहीं था। जैसा कि उल्लेख किया जा चुका है आरोप संख्या-3 प्रार्थी के विरुद्ध आंशिक रूप से प्रमाणित हुआ है। ऐसी दशा में प्रार्थी के वेतन में से 5 वेतन वृद्धि की कमी किए जाने के स्थान पर 4 वेतन वृद्धि की कमी किए जाने का आदेश दिया जाता है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशितार्थ प्रेषित की जाए।

ह० अपठनीय
पीठासीन अधिकारी

नई दिल्ली, 6 जुलाई, 2001

का.आ.1816:—औद्योगिक विवाद अधिनियम, 1947 (1917 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/314/99-आई आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 5-7-2001.

[No. L-12012/314/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT : 1/2000

Employers in relation to the management of
D.G.M., State Bank of India.

AND

Their Workman Shri Dattatray S. Joshi.

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/314/99/IR(B.I.) dated, 17/20-12-1999 on following schedule.

SCHEDULE

"Whether the quantum of penalty and the process to determine and award the same by the management of State Bank of India, Zonal Office, Nagpur to Shri D. S. Joshi, Dy. Head Cashier and General Secretary, State Bank of India Workers Organisation, Nagpur for his alleged misconduct is just, legal and reasonable? If not does the workman deserve any relief?"

Shri D. S. Joshi, workman has submitted Statement of Claim that he is an employee of State Bank of India since 4-5-1970. He is General Secretary of Trade Union i.e. State Bank Worker's Organisation. In the capacity of General Secretary he addressed Press Conference on 23-9-1991 and expressed views regarding the working of the management of State Bank of India. He was issued chargesheet on 6-2-1992 for his act of addressing the Press Conference in violation of Rules of Conduct. He was charged under clause 521(4) (b) and (j) of Sastry Award. The enquiry was started against him for his above misconduct. The enquiry was concluded on 17-3-94. His appeal was dismissed on 11-1-97.

He has taken the plea that he has been victimised due to being involved in the trade union activities as General Secretary of the trade union of State Bank Workers Organisation. The enquiry was not conducted according to Principles of Natural Justice.

The bank management submitted Written Statement and stated that the workman D. S. Joshi had completed more than 22 years service at the time of service of the chargesheet. He made defamatory statements and frivolous allegations against the Bank Officers, in Press Conference at Jalgaon on 5-3-1990 for which he was punished. On 2-11-91 he wrote objectionable letter to his Branch Manager, Nagpur Branch, Nagpur. On 23-9-1991 he addressed Press Conference at Nagpur. His explanation was called. On 2-11-1991 he submitted reply. His conduct was in violation of the Rules of Fidelity and Secrecy of the bank. His conduct amounted to gross misconduct under clause 521 (4) (b) and (j) of Sastry Award.

During enquiry nineteen dates were fixed. On 13 occasions he avoided to cooperate in the conducting of enquiry either on the ground that his defence representative has not turned up or that he needs some documents and so on. Ultimately the enquiry was conducted on 17-3-1994. He got full opportunity to submit his Defence. Mr. P. P. Padalikar, Telex Operator, Pune Main Branch, Pune was his Defence Representative during the enquiry. The charges have been proved against the workman and the punishment awarded to him by reducing the pay to next lower stage for a period of two years vide order dated 29-8-96 is justified.

I have heard the representative of the workman Shri Sahastrabudhe and the Law Officer of the State Bank of India. Both the parties have submitted their Written Argument. The representative of the workman and representative of the bank management also argued the case orally.

The cross examination of the workman Dattatray S. Joshi was recorded in this court on 8-11-2000. In cross examination he admitted that he is in the service of bank since 1970. He is the employee of the bank and he is also General Secretary of the union of the bank employees. He also represents the bank employees in departmental enquiries. He admitted that he had addressed Press Conference at Jalgaon on 5-3-90 without permission of his Superior Officers. He also admitted that prior to this incident he was also awarded punishment of warning for addressing Press Conference. On 29-8-96 he has been punished for reduction in pay to the next lower stage for the period of two years. He had admitted that he had addressed Press Conference at Nagpur on 23-9-1991.

The chargesheet was submitted against him for calling to Press Conference without permission of bank authorities on 23-9-91. He admits that P. P. Padalikar was his Defence Representative in the enquiry proceedings.

Thus from the admission of the witness as mentioned above the charge of misconduct has been proved against him.

Shri V. S. Kumar was examined by the bank management. He did not conduct the enquiry.

The representative of workman Shri Sahastrabudhe has argued that the workman had addressed Press Conference at Nagpur on 23-9-91 as a General Secretary of the Trade Union. There was no relationship of workman and management hence he should not be punished. This argument is baseless. He is firstly the employee of the bank and thereafter he is the representative of the union. Without obtaining the permission of Superior Officers to address the Press Conference, he violated the rules of service.

Reference book on Staff Matter, Volume 2, Chapter 25 contains para 25.1.1 as under :

"No employee shall in any radio broadcast or in any published document or communication to the press or in public utterance make any statement which has the effect of disparaging the Bank or its management bringing the same into disrepute."

The details given in the Press Conference were published in the Newspaper on 24-9-1991 with the heading "SBI pension fraud culprits being shielded". The statement given by him in Press Conference were reported in the Newspapers in Hindi, English and Marathi. These documents are in file.

Management has submitted ruling AIR 1998 Supreme Court 1064, M. H. Devendrappa, Appellant Vs. The Karnataka State Small Industries Development Corporation, Respondent. In this ruling it is held by the Hon'ble Supreme Court that appellant had made a direct public attack on the Head of his organisation. He had also in the letter to the Governor made allegations against various Officers of the Corporation with him he had to work and his conduct was clearly detrimental to the proper functioning of the Organisation or its internal discipline. The statement amounted to lowering the

prestige of organisation in which he worked. It was the fit case where the employer was entitled to take disciplinary action under rule 22.

In view of above ruling of Hon'ble Supreme Court the workman D. S. Joshi has been rightly punished by the management of State Bank of India for his misconduct. As representative of the union he could discuss the matter with the Senior Officers to find out the solutions of the problems he wanted to bring to the notice of the Superior Officer. He had no right to call or address any Press Conference without obtaining prior permission of Superior Officers.

The action of management in punishing him for reducing the pay to next lower stage for a period of two years was justified.

The management has itself taken a lenient view in awarding punishment in the circumstances discussed above, hence the workman is not entitled to any relief.

ORDER

The quantum of penalty and the process to determine and award the same by the management of State Bank of India, Zonal Office, Nagpur to Shri D. S. Joshi, Dy. Head Cashier and General Secretary, State Bank of India Workers Organisation, Nagpur for his alleged misconduct is just and reasonable.

The workman D. S. Joshi is not entitled to any other relief.

The reference is answered accordingly.

Date : 22-5-2001.

B. G. SAXENA, Presiding Officer.

नई दिल्ली, 6 जुलाई, 2001

का.अ. 1817.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एन-12011/30/98-आई आर (बी-1)]

राजेश कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1817.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Nagpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 5-7-2001.

[No. L-12011/30/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.
Reference No. 54/2000
State Bank of India

AND

Shri Ghanshyam N. Sapate
Shri Dinesh N. Shinde
Shri Prakash S. Fulzele . . . Workman

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12011/30/98-IR(B-I) dated 29-1-1999 on the following schedule.

SCHEDULE

“Whether the action of the management of State Bank of India, Nagpur in terminating the services of three workmen namely Shri Ghanshyam N. Sapate w.e.f. 5-7-1997, Dinesh N. Shinde w.e.f. 5-7-1997 and Prakash Shankar Rao Fulzele w.e.f. 1-1-1997, are legal and justified? If not, to what relief the concerned workmen are entitled?”

This reference has been received from Government of India, Ministry of Labour, New Delhi, regarding the termination of services of Ghanshyam N. Sapate, Dinesh N. Shinde and Prakash Sankar Rao Fulzele.

The above workmen have submitted their statement of claim in the court of C.G.I.T. No.-II at Mumbai on 12-4-1999. It is mentioned in the claim that they are employed in the State Bank of India on temporary basis. Ghanshyam N. Sapate worked from 8-8-1994 to 5-7-1997, Dinesh Shinde worked from 1-6-1995 to 5-7-1997 and Prakash S. Fulzele worked from 1-7-1995 to 31-12-1996. Thus each of them has worked for more than two hundred and forty days. They have been illegally terminated from service. They have claimed reinstatement with continuity in service and backwages.

The management of State Bank of India contested the case that these workmen were engaged purely on daily wages to waterman/messengers. Sometimes they have worked for full day and sometimes for part of the day.

There was settlement between All India State Bank of India Staff Federation and the management of the State Bank of India on 17-11-1987 and on that basis the temporary employees/labours were called for interview and were placed in panel prepared for absorbing them against permanent vacancies which arose between 1987 to 1991. The names of these workmen were also included in the waiting list. This waiting list expired on 31-3-1997. Those person who could not be considered upto 31-3-1997 have no claim for their appointments in subsequent vacancies.

The provisions of section 25-F of IDA act are not applicable in this case.

The workmen are not entitled to reinstatement. They are also not entitled for any other relief.

I have heard the arguments of Shri Sahartha Buddhe the Union representative and the law officer of State Bank of India and have perused the entire oral and documentary evidence on record.

On behalf of the workmen the affidavits of Dinesh N. Shinde, Prakash S. Fulzele and Ghanshyam N. Sapate were filed. They were cross examined by the law officer of S.B.I.

Prakash S. Fulzele stated in cross examination that he was appointed as waterman in Itwari Branch of State Bank in 1995 by Branch Manager. He had not moved any application for appointment. He was called for interview on the basis of the settlement between the Union of State Bank employees and the management. He was removed from service as the waiting list expired on 31-3-1997.

Ghanshyam N. Sapate also stated in cross examination that he was also appointed by branch manager of Itwari Branch on 8-8-1994. He was called for work when the work was available. He was working as waterman and temporary messenger. He was called for interview and his name was in waiting list.

Dinesh N. Shinde also stated that he had not moved any application for appointment in the Bank. He was not paid when he proceeded on leave. He does not know anything about the settlement between the all India S.B.I. staff federation and the management of S.B.I. His name was also in waiting list.

From the above evidence it is therefore clear that the above workmen were called for interview and were placed in the waiting list by the Bank because they were working as temporary employees/casual labours on the basis of settlements mentioned above.

This list has come to an end on 31-3-1997 and they are not entitled for further appointments.

A large number of writ petitions were pending in High Court of Orissa at Cuttack and they were jointly disposed of by order dated 18-9-1998 (writ petitions for a special leave to appeal (civil) ... CC30811/1999 from the judgement and order dated 18-9-1998 in OJC 9039/97 of the High Court of Orissa at Cuttack.

The Honourable High Court of Orissa in O.J.C. No. 9039/97 in the matter of G. Madhav Rao petitioner versus State Bank of India and others has held that those temporary employees and casual labours are not entitled for further appointments or reinstatement who were in the waiting list and could not be regularised in service upto 31-3-1997. They are therefore not entitled to any relief. All the writ petitions were dismissed.

This matter was also heard by the Honourable Supreme Court on 16-7-1999 by the Bench consisting of Honourable Mr. Justice S. B. Majumdar and Honourable Mr. Justice D. P. Mahapatra and the undernoted order was passed.

Delay condoned.

The specially leave petitions are dismissed on merits.

The above decision of the Honourable Supreme Court in Madhav Rao petitioners versus State Bank of India and others decided on 16-7-1999 has become final.

In view of the above findings of the Honourable Supreme Court, these workmen Ghanshyam N. Sapate and Dinesh N. Shinde and Prakash S. Fulzele are not entitled for reinstatement or any back wages. They also cannot claim any other relief.

The Law Officer of S.B.I. has argued that they were not employed by the officer competent for appointment. Their appointment was also illegal as the prescribed procedure for appointment was not followed. The workmen have no case for regularisation in view of ruling of Honourable Supreme Court in Ashwani Kumar and others versus State of Bihar and others 1997 (labour-I, C-578).

In view of the facts and law discussed above the action of the management of State Bank of India, Nagpur in terminating the services of Ghanshyam N. Sapate with effect from 5-7-1997 Dinesh N. Shinde w.e.f. 5-7-1997 and Prakash S. Fulzele w.e.f. 1-1-97 is legal and justified.

ORDER

The action of the management of a State Bank of India, Nagpur, in terminating the services of Ghanshyam N. Sapate with effect from 5-7-1997, Dinesh N. Shinde w.e.f. 5-7-1997 and Prakash S. Fulzele w.e.f. 1-1-1997 is legal and justified.

These workmen are not entitled to any other relief.

The reference is answered accordingly.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का.प्र. 1818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोक्तों और उनके कर्मचारों के बीच, उत्पन्न में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/21/2001-आई प्रार (बी-1)]

राजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1818.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 5-7-2001.

[No. L-12012/21/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT : 180/2000

Employers in relation to the management of A.G.M., State Bank of India

AND

Their Workman Shri Kiran Shrikant Sathe.

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-1202/21/2000/IR(B-I) dated 25/30-5-2000 on following schedule :

SCHEDULE

"Whether the action of the management of State Bank of India through its Asstt. General Manager, Region IV, Zonal Office, Nagpur in not promoting/appointing Shri Kiran Shrikant Sathe as a "Telex Operator" being a Seniormost Clerk/Typist in the branch is legal, proper and justified? If not, so what relief and benefits the workman is entitled to?"

Shri Kiran Shrikant Sathe has submitted Statement of Claim that he was the seniormost Clerk/Typist in the branch of State Bank of India, Region IV, Zonal Office, Nagpur. He was not promoted as Telex Operator.

Shri Kiran S. Sathe has stated that he is working in the bank since 29-3-79. His name was recommended for appointment by Branch Manager, but his representation was not considered. He is therefore suffering financial loss.

In the Written Statement the bank has taken the plea that this is not an Industrial Dispute but it is an Individual dispute, under section 2(k) of I.D. Act, 1947. The dispute has been raised after 6 years by the union.

The Telex Machine was installed at Akola Treasury branch in April, 1994. For this post the senior most Clerk/Typist having minimum speed 50/60 w.p.m. was required in typing for appointment. The workman appeared in the examination and failed. He got only one mark out of thirty marks. Three other candidates had also appeared in the typing test with him on 18-11-94. Shri D. P. Chopde, one candidate got nineteen marks out of thirty marks and was selected for this post. The workman has not therefore qualified the test for promotion.

The workman argued the case himself. The bank was represented by the advocate. On 14-5-2001 the workman Shri Kiran S. Sathe represented that he has submitted Written Statement and he may be allowed

to argue the case. The arguments of both the parties were heard on 16-5-2001.

I have considered the oral and documentary evidence produced by the parties in this case.

It is admitted to both the parties that Shri Kiran S. Sathe is the employee of State Bank of India. It is also admitted to both the parties that typing test for the post of Telex Operator was conducted by the bank. The paper set for English typing is Exhibit M-4. On 18-11-94 Shri Kiran S. Sathe had appeared in the test for typing. His test paper is Exhibit M-6. He got only one mark out of thirty marks. Another candidate Sau S. G. Thatte also got one mark out of thirty marks. Miss Arti Abhyankar got zero mark, only Shri D. P. Chopde got nineteen marks out of thirty marks. It is therefore clear that the workman got only one mark out of thirty marks and therefore he was not found fit for appointment for the post of Telex Operator.

Circular letter No. PER/KCL/61 dated 12-2-94 Exhibit W-9 has been submitted by workman. This letter shows that for the appointment of Telex Operator, the candidate must have minimum speed 50/60 W.P.M. in typing and seniority in the branch. This practice will continue as per the understanding with the Staff Federation. It is therefore clear that the workman was not having this required speed in English typing on 18-11-94 and he got only one mark out of thirty marks due to which he was not considered fit for promotion.

The workman has argued that when he joined service he was having speed 50/60 W.P.M. but he was working on different counters and so at the time of examination he was not doing the typing work due to which he could not qualify the typing test. He argued that he should be promoted on the basis of seniority.

This argument of the workman is absolutely baseless. When he has failed in the typing test and has got only one mark out of thirty marks, the denial for his promotion by management was justified.

The management has also submitted letter No. AGS/NAG/2000/540 dated 24-11-2000 of S. T. Gulgulwar, Asstt. General Secretary of the employees union. In this letter the union has represented to the Deputy General Manager, State Bank of India, Zonal Office, Nagpur that the appointment of Telex Operator should be made by conducting aptitude test (Typing test) from eligible candidates and the appointment of one candidate of Amravati Camp branch is violative of this policy.

In the above circumstances the union of the workman should have not raised this dispute. The Central Government Industrial Tribunals have been constituted to decide the dispute of the employees of the Public Sector Undertakings and the management in which interest of a substantial or an appreciable number of workmen of the establishment is involved. The individual matters or disputes should not be referred to the Tribunal under section 2(k) and 10 of the I.D. Act, 1947.

The management has also cited ruling the Bombay Union of Journalists and others Vs. The "Hindu",

Bombay and another, 1961 II LJ page 436 in support of their argument that this is not an Industrial Dispute but it is an Individual Dispute.

Considering the above facts and documents the action of the management of State Bank of India through its Asstt. General Manager, Region IV, Zonal Office, Nagpur in not promoting/appointing Shri Kiran Shrikant Sathe as a "Telex Operator" is legal, proper and justified.

ORDER

The action of the management of State Bank of India through its Asstt. General Manager, Region IV, Zonal Office, Nagpur in not promoting/appointing Shri Kiran Shrikant Sathe as a "Telex Operator" in the branch is legal, proper and justified.

He is not entitled to any other relief.

Dated: 17-5-2001.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का.भा. 1819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ राजस्थान लिमिटेड के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/44/96-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Rajasthan Ltd. and their workman, which was received by the Central Government on 5-7-2001.

[No. L-12012/44/96-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT:

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT 167/2000.

Employers in relation to the management of Bank of Rajasthan Ltd.

AND

Their Workman Shri Pandurang Nagorao Mohadika.

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide Order No. L-12012/44/96/IR(B-I) dated 25-4-97 on following schedule.

SCHEDULE

"Whether the action of the management of the Bank of Rajasthan Ltd. represented through the Manager, Gandhi Grain Market Branch, Near Telephone Ext. Lakadganj, Nagpur in terminating the services of Shri Pandurang Nagorao Mohadikar, an Armed Guard w.e.f. 29-6-94 is valid, just and proper? If not, to what relief the workman is entitled?"

Pandurang Nagorao Mohadikar has submitted statement of claim that he is an Ex. serviceman. On 18-12-90 he was employed as Armed Security Guard and worked up to 28-6-94 in the Bank of Rajasthan near Itwari Telephone Exchange, Nagpur. He used to go with the Cashier etc. to the Reserve Bank of India for taking Cash etc. He was paid Rs. 1100 per month

In February 1994 Central Office of Bank of Rajasthan Ltd. called applications for appointment of Armed Guards. He applied for the said post but he has not heard anything about the fate of his application moved in February, 1994.

On 29-6-94 he was informed that his services are not required.

The management of Bank of Rajasthan submitted written statement that the bank has its Registered Office at Clock Tower, Udaipur (Rajasthan) and Central Office at Jaipur. The officials are selected for appointment at Jaipur Office. The workman was appointed temporarily at contract rate of Rs. 1100 per month. He was not qualified for the post of Armed Guard. His service was therefore discontinued. He was not a regular employee of the Bank. He is therefore not entitled to any relief.

The rejoinder was filed by the workman Shri Pandurang Nagorao Mohadikar on 25-8-99 at CGIT Court No. 1 at Mumbai. The case was received by transfer in this court in June, 2000 and the notices were sent to the parties for appearance on 17-8-2000.

The workman appeared on 17-8-2000, but he did not submit any Affidavit or document in support of his claim. On 4-10-2000 Shri S. M. Kahr, Advocate filed Vakalatnama for the workman. Another Advocate Sh. S. D. Shukla moved an application for filing affidavit of the workman on 12-12-2000. Both the parties were directed to submit their documents and affidavits if any on 31-1-2001. After that on 29-3-2001 both the parties absented and no evidence was produced. Again the case was adjourned to 11-4-2001 and 14-5-2001. Both the parties absented and no evidence was produced.

In view of the above facts it is clear that from 17-8-2000 to 14-5-2001 the workman was given a number of opportunities to lead evidence, but the workman himself avoided to produce evidence in support of his claim.

The letter No. PER/ROBY/5641/91 dated 17-9-91 is on the file which shows that the appointment of Shri Pandurang Nagorao Mohadikar was made as Armed Guard on contract basis. The statement of claim of the workman also shows that he was not appointed by the management of Bank of Rajasthan on the regular post. He had moved an application for his appointment in February, 1994, but his application for permanent appointment was not considered.

From the admission of the workman in his statement of claim that he was not appointed as Armed Guard in the service of Bank of Rajasthan up to February, 1994 and he was not appointed according to the prescribed procedure clearly shows that he was not the employee of the bank.

In the above circumstances his service was discontinued from 29-6-94. He was not terminated from service by the Bank and he is not entitled for reinstatement.

ORDER

The action of the management of the Bank of Rajasthan Ltd. represented through Manager Gandhi Grain Market Branch, Near Telephone Ext., Lakad-ganj, Nagpur in discontinuing the services of Shri Pandurang Nagorao Mohadikar, an Armed Guard, w.e.f. 29-6-94 is valid, just and proper. Workman is not entitled to any other relief.

Reference is answered accordingly.

Dated : 15-5-2001.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का.आ. 1820.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/धर्म न्यायालय, बंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/190/91-आई आर (बी-III)/(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of State Bank of India and their workman, which was received by the Central Government on 5-7-2001.

[No. L-12012/190/91-IR(B-III)/(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, 'SHRAM SADAN', III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 28th June, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B.Co., LLB.,
Presiding Officer,
CGIT-cum-Labour Court,
Bangalore.

C. R. No. 59/91

I PARTY

Shri Balachandra Joshi,
C/o The General Secretary,
Dharward District Bank,
Employees Association
Corporation Building,
Hubli-580020.

II PARTY

The Zonal Manager,
State Bank of India,
Circle-I, Lamington Road,
Hubli-580020.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/190/91/IR-B(III) dated 18-9-91 for adjudication on the following schedule :

SCHEDULE

"Whether Shri Balachandra H. Joshi was a workman of the State Bank of India? If so, whether the action of the State Bank of India was justified in terminating the services of Shri Balachandra H. Joshi, Janatha Deposit Collector w.e.f. 19-1-1991? If not, to what relief Shri Joshi is entitled to?"

2. The First Party was working as Janatha Deposit Collector with the Second Party from 19-1-1976. He was terminated w.e.f. 19-1-1991 and therefore industrial dispute is raised.

3. First Party appeared and filed Claim Statement.

4. It is the case of the first party that he joined the services of the second party w.e.f. 19-1-1976 as Janatha Deposit Collector and he was working sincerely and honestly. He was paid a remuneration of

Rs. 3,842 for the month of December, 1990. The management illegally terminated the services of the first party with a letter dated 19th January, 1991. No notice was given. No enquiry was held. The termination is illegal. It is said that the action of the management is only to see that the benefits of the Award of the Hon'ble Industrial Tribunal, Hyderabad are not given to the first party. The first party has prayed to allow the reference. It is the further case of the first party that the allegations against workman are not correct and the order of termination is illegal. First party for these reasons has prayed to allow the reference.

5. Second party management filed Counter. The case of the second party in brief is as follows :

6. The main contention of the Second Party is that the first party was not a workman as defined in Section 2(s) of the Industrial Disputes Act. The first party executed an agreement and started working with the management as Agent and there is no master and servant relationship. The question of issue of notices and holding enquiry does not arise at all.

7. The first party was not subject to the normal working hours of the bank. He was not paid any salary or wages. Only commission was paid. The work of the first party is not comparable with the work of regular employees. The average monthly income is not correctly shown by the first party. The question of issuing charge sheet and conducting an enquiry does not arise. Second party for these reasons has prayed to reject the reference.

8. In the instant case the first party remained absent. Vakalat was filed for the second party and I have heard counsels

9. It is seen from the records that this is a very old case. It is the case of 1991 and we are in the middle of 2001. Parties have not taken any interest for the progress of the case. Many adjournments were given but no evidence was adduced. In view of the judgement of the Apex Court "Indian Bank Association Vs. Workmen of Syndicate Bank and others" I am of the opinion that no purpose will be served in adjourning this matter and therefore I closed the evidence and heard the counsels.

10. I have read the above decision of the Apex Court carefully and as per the above decision of the Hon'ble Apex Court the first party is workman and the contention of the management that the first party is not a workman will not hold good.

11. It is seen from the counter that mainly the management has contested this case on the ground that the first party is not a workman. Now in view of the judgement of the Hon'ble Apex Court the stand of the management goes.

12. I felt, it is not necessary to give adjournment as per the wish of the parties, so I closed this case. Further in view of the decision of the Hon'ble Apex Court, now it is clear that the first party is a workman.

13. Once it is held that the first party is a workman, the termination of first party by the management without any notice, enquiry and paying any compensation as required under the Industrial Dispute Act is illegal.

Therefore, I am of the opinion that this reference has to be allowed and accordingly I proceed to pass the following order :

ORDER

The reference is allowed. The order of termination is set aside and the management is directed to take the first party as agent, and act in accordance with the principles held in the above decision of the Apex Court. Accordingly reference is disposed off.

(Dictated to PA transcribed by her corrected and signed by me on 28th June, 2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का.आ. 1821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ ईस्टर्न रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था ।

[सं. एल-41012/229/99-आर्. आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Eastern Railway and their workman, which was received by the Central Government on 5-7-2001.

[No. L-41012/229/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT : 12/2000

Employers in relation to the management of D.R.M., South Eastern Railway.

AND

Their Workman Shri Rajesh Kumar S. Shrivatri.

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-41012/229/99/IR(B-I) dated. 23/24-12-1999 on following schedule :

SCHEDULE

"Whether the action of the Management of Divisional Railway Manager, S.E. Rly., Nagpur in terminating the services of Shri Rajesh Kumar Sunderlal Shrivatri, Ex. Sub-Partee/Casual Labour R/o S.W.M., Station Salekasa, District Bhandara (M.S.) w.e.f. 9th November, 1992 is legal and justified? If not, to what relief the said workman is entitled and from what date?"

Rajesh Kumar Sunderlal Shrivatri has submitted Statement of Claim that his father was working as a Switchman in Salekasa Railway Station in operating department of S.E. Railway, Nagpur Division. He had applied for appointment as Casual Labour/Substitute Workman on 22-12-1989. He worked for 184 days in Engineering Department under Permanent Way Inspector, Saoner. Again at Dongargarh he worked for 9 days as temporary Waterman. He also worked for 9 days in commercial department. On 18-11-91 screening committee prepared a list in which his name was mentioned at Sl. No. 24 as Rajesh Trivedi. He was not placed in the selection panel and his services were terminated on 09-11-92. The screening committee had mentioned that he had produced a false Casual Labour Certificate for his working in Engineering Department. He prayed for reinstatement.

Senior Divisional Personal Officer, Divl. Railway Manager (P), S.E. Rly., Nagpur submitted Written Statement on 29-05-2000. It was contended that the workman was engaged as a Substitute Porter. His initial engagement was based on fake casual service card. Assistant Personnel Officer Shri A. Vinayagam had conducted inquiry about the service card. His case was not considered for screening on receipt of inquiry report from Inquiry Officer and he was terminated from 09-11-92. He was paid retrenchment compensation and one months wages.

J. S. Sukhdeve submitted affidavit for management on 19-06-2000. Workman also submitted his affidavit on 16-08-2000. Both the parties closed the evidence. The counsel for both the parties argued the case orally on 14-05-2001. The counsel for both the parties had also submitted their Written Arguments. The documents have also been filed by the parties. I have considered the evidence on record and the arguments of the advocates of both the parties.

It is admitted to the workman that he was working as Casual Labour or some times as a Substitute workman. He was not appointed for a regular job. Workman says that he worked for 184 days from 24-6-84 to 23-9-85. He again worked for 9 days as Waterman from 07-04-89 to 15-04-89. These documents are Exhibits W-2 and W-5. Document No. W-8 shows that at Serial No. 24 the name mentioned was Rajesh Trivedi. The name of this workman is Rajesh Kumar Sunderlal Shrivatri. Neither he nor his father name bear the caste Trivedi.

Another document W-1 submitted by the workman Rajesh Kumar S. Shrivatri shows that he had moved the application that he is the son of a Railway Employee serving as a Switchman at Salekasa, who is frequently falling ill due to often stomach pain and thereby causing a great difficulty in managing the day to

day expenses of home. He requested that he may be provided work on Casual basis.

This application contains order dated 22-12-89. It is strange as to how he obtained certificate for working from 24-06-84 to 23-09-85. This certificate is dated 19-05-89. The screening committee prepared a list on 25-6-92 but this workman was not appointed by the Divisional Personal Officer, S.E. Rly., Nagpur. The order dated 09-11-92 (W-11) shows that the Department had taken a lenient view and in place of terminating him, considered his case for retrenchment. The workman Rajesh Kumar S. Shrivatri was not a regular employee of the S.E. Railway. However he was given retrenchment compensation of Rs. 1161.00 and was further paid one month's wages Rs. 1416.00. On 30-03-93 Rajesh Kumar was not considered fit for reinstatement in service by the department and his application for reinstatement on humanitarian ground was also rejected. It is therefore clear that the workman was retrenched from service considering his family conditions. The department through Chief Personal Officer, S.E. Railway had informed the workman that he was not found fit for reinstatement in service. Thus, the action of the management was justified in retrenching him from the service from 09-11-92.

In the above circumstances no further relief can be granted to the workman when the management has already taken a lenient view in this case.

ORDER

The action of the management of Divisional Railway Manager, S.E. Rly., Nagpur in retrenching Rajesh Kumar Sunderlal Shrivatri from service w.e.f. 09-11-92 is legal and justified.

The workman is not entitled to any other relief.

The reference is answered accordingly.

dated : 16-5-2001.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का. आ. 1822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़, हैदराबाद के प्रबन्धतल के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-12012/247/90-आई आर (बी-III)/
(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1822.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial

Dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on 5-7-2001.

[No. L-12012/247/90-IR(B-III)|(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 'SHRAM SADAN', III MAIN, III
CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE

Dated : 25th June, 2001

PRESENT :

HON'BLE SHRI V. N. KULKARNI, B.COM.
LLB, Presiding Officer
CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. No. 7/91

I PARTY :

Shri H. Indi.
Ex. Cashier, State Bank of Hyderabad,
Tavergera Branch,
Raichur Dist.,
(Advocate-N. Narasimha Swamy).

II PARTY :

Regional Manager,
And Disputary Authority,
State Bank of Hyderabad,
Regional Office II,
Raichur,
(Advocate : K. Kasturi).

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/247/90-IR (B-III) dated 12-2-1991 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of State Bank of Hyderabad in dismissing the services of Shri H. S. Indi. Ex. Head Cashier with effect

from 9-1-1988 is justified ? If not, to what relief the workman is entitled to ?"

2. The first party workman was working with the Second Party since 1973. Charge sheet was given to him and enquiry was conducted against him for the misconduct. On the basis of enquiry report first party was dismissed and therefore this dispute was raised.

3. First party appeared and filed detailed claim statement.

4. He has narrated the incident and says that charge sheet was given to him. The main contention is that at the relevant time he was taking treatment from Psychiatrist and he was not keeping perfect health and he was getting attacks. He was under mental agony. He says that excess payment was made on 14-2-1986 and there was shortage of Rs. 36,000. The shortage was detected in the course of that day only and on 15-2-86 under compulsion gave a confession statement. He requested the management to lodge a police complaint so that investigation can be done but it was not lodged. The first party has not done anything intentionally to cause any loss to the bank. His further case is that on 17-2-1986 itself the next working day he has deposited the entire amount and he has not committed any misappropriation. With all this, enquiry was ordered and the order of dismissal is passed which is too harsh and not proportionate. First party has prayed to pass award in his favour.

5. The case of the second party is that the dismissal order is correct and there is no illegality. The contention of the first party that he was suffering from mental agony is not correct and it is false statement. The case of the first party that by over sight he paid Rs. 40,700 instead of Rs. 4700 and there was excess payment of Rs. 36,000 is not correct. All allegations made by the first party are not correct and they are denied parawise by the management. First party is not innocent. He has misappropriated the amount. The second party for these reasons has said that the action of the management is correct.

6. Regarding enquiry detailed reply is given and is said that the enquiry is proper and fair.

7. It is seen from the records that on behalf of the management MW1 was examined, and workman got examined himself as WW1.

8. This court by its order dated 2nd September 1999 has passed orders holding that the DE is fair and proper. Thereafter the matter was posted for arguments. I have heard detailed arguments. Second party has also filed written arguments along with citations. I have read written arguments and gone through the citations relied by the second party.

9. In the instant case true it is the domestic enquiry is held as fair and proper but the learned counsel for the first party vehemently argued that in fact there is no misappropriation and according the charge also the management has said that there is shortage and the shortage is paid by the first party on the next working day i.e. 17-2-1986 and the first party during that period was not keeping good health and he has filed medical certificates but that was not considered and in the given circumstances the order of dismissal is not proportionate and the same is too harsh.

10. Against this it was argued by the learned counsel for the second party that the first party has misappropriated Rs. 36,000 and the punishment awarded is proper. I have considered the submissions made by the learned counsels appearing for the parties. I have read all the decisions cited carefully. The decisions are Writ Petition Nos :

- (1) 36131/1993, dated 9th February 1994.
- (2) 8404/1984 dated 5th April 1994.
- (3) 2594/1994, dated 15th November 1994.
- (4) 5224-5225/2000 dated 21st September 2000.
- (5) 1718/1998, dated 26th September 2000.

11. Admittedly the facts of the present case are quite different from the facts of the above decisions relied by the learned counsel for the Second Party. There is no clear evidence against the first party that he has misappropriated a sum of Rs. 36,000. Admittedly no

police complaint was filed for this misappropriation. From the records it is seen that the first party has given confession letter. Infact the first party requested to give police complaint to true the truth and culprit, but the management without doing that took confession and issued charge sheet. This is a circumstance which shows that by oversight payment was made and there was shortage and first party is innocent.

12. I have read the evidence of first party carefully and I had an occasion to see him in the witness box. To my mind the evidence of first party is very natural and it is also established from the records that during the relevant period first party was not in perfect health and he was in depressed mood.

13. Apart from this the management has not filed the lose cheque of Rs. 4700. Taking all this into consideration I am of the opinion that the first party is innocent and has not committed any misappropriation. It is also a fact that the first party has deposited Rs. 36,000 on the next working day would go to show that the first party had no intention to misappropriate the amount of the bank and it was a bonafide mistake. It is also seen that from the beginning it is said that there was shortage.

14. Taking all this into consideration I am of the opinion that the punishment of dismissal is too harsh and end of justice will meet if the dismissal order is set aside and backwages are refused. Accordingly I proceed to pass the following order :

ORDER

The reference is partly allowed. The order of dismissal is set aside with continuity of service and the second party is directed to reinstate the first party from the date of dismissal. In the given circumstances backwages are refused.

(Dictated to PA transcribed by her corrected and signed by me on 25th June 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, जून, 2001

का. आ. 1823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतंत्र के संवद्ध नियोक्ता और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-2001 को प्राप्त हुआ था।

[सं. एन-12012/222/88-डी-II (ए)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd June, 2001

S.O. 1823.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 22-6-2001.

[No. L-12012/222/88/D II(A)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 91 of 1988

Shri R. S. Bali,
Ball Street,
Mohalla Ravidaspura,
Nawanshehar,
Doaba,
Jullundur (Pb.)

.... Petitioner

Versus

Zonal Manager,
Indian Bank,
I/E
New Delhi.

.... Respondent

REPRESENTATIVES:

For the workman—Shri B. S. Sa'ni,

For the management—Shri H. C. Gupta.

AWARD

(Passed on 30th of May, 2001)

The Central Government, Ministry of Labour vide Notification No. L-12012/222/88-D. 2(A) dated 4th November, 1988 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Indian Bank in dismissing from service Shri R. S. Bali is justified? If not, to what relief is the workman entitled?"

2. The claim of the workman in brief is that he was employed as Clerk in Roop Nagar Branch of the Indian Bank. While he was working there, he committed certain acts of misconduct during the month of July and August 1983. Charge sheet was given to him on 21-6-1984 by the disciplinary authority and enquiry was conducted against him. Consequently he was dismissed from service on 7-5-1986. He filed an appeal to the General Manager of the Bank which was also dismissed on 12-8-1986.

3. The charges levelled against him were vague and misleading which confused him in his defence. The enquiry was not conducted in fair and proper manner. The findings of the enquiry officer was given on considering in admissible and irrelevant evidence which was produced by the management. The finding arrived at by the enquiry officer was based

on surmises and conjectures. The punishment inflicted upon was also harsh and disproportionate to the alleged misconduct. Therefore, the dismissal of the workman from service is illegal and contrary to the principle of natural justice, which should be set aside and the workman be declared to be in continuous service of the management with all consequential benefits.

4. The management has filed its written statement alleging that the charges levelled against the workman in charge sheet were specific and unambiguous. The enquiry was conducted following the principle of natural justice. The statement of the witnesses were recorded in presence of the workman. The witnesses were cross-examined on behalf of the workman. Relevant and admissible evidence was considered by the enquiry officer, while giving his findings relating to alleged misconduct. The charges were proved against him. Before imposing the punishment, the show cause notices was given to the workman and after considering the reply of the workman, the punishment of dismissal was imposed upon him. The order of the disciplinary authority was confirmed by the appellate authority considering all the facts of the case. Thus no irregularity has been committed in conducting the enquiry against the workman. The findings given by the enquiry officer is based on legal evidence. Therefore, the claim of the workman is liable to be dismissed with special cost.

5. The facts stated in paragraphs 1 to 5 in claim statement are not disputed by the management. The workman has submitted his affidavit Ex. W1 and charge sheet Ex. W2 and his explanation Ex. W3. The management has filed affidavit of Shri G. Suresh Ex. M1, and affidavit of Chief Manager N. S. Khamesra which is Ex. M2. The management has also produced the enquiry file also.

6. The workman has deposed in his affidavit that the material witness namely Shri Inder Pal and Smt. Raj Kumari were not examined by the Bank. Handwriting expert was also not examined. In absence of these witnesses the charges levelled against him were not proved by the management. The enquiry officer has recorded his finding in mechanical manner. The disciplinary authority while awarding the punishment of dismissal did not consider the past good conduct of the deponent. Personal hearing by the enquiry officer and disciplinary authority was not given to him, before passing the order of the dismissal.

7. The witnesses of the management have deposed that the enquiry was conducted in fair and proper manner. The full opportunity was given to the workman for his defence. The findings of the enquiry officer is based upon admissible and relevant evidence. All charges have been proved fully against the workman. He has misappropriated the money of the bank and the customer fraudulently. The examination of Smt. Raj Kumari Shri Inder Pal and handwriting expert was not necessary to prove the charges. Personal hearing was also given by the enquiry officer. The statement of Shri N. S. Khamesra is based upon the record of case. He has admitted. In his cross-examination that he has no personal knowledge about the case. Another witness of the Bank Shri G. Suresh has admitted that the management did not produced any handwriting expert during the course of enquiry because the manager and other official of the bank were conversant with the handwriting and signatures of the workman.

8. The workman has admitted in his cross-examination that he had participated in the enquiry alongwith his representative. The witnesses of the management were duly cross-examined by his representative. The opportunity to adduce evidence in his defence was given to the workman but the representative of the workman did not wish to produce any defence evidence. The show cause notice was also given to him by the disciplinary authority before inflicting punishment. On taking into consideration the admissions made by the workman in his cross examination, the testimony of both the witnesses of the management can not be disbelieved. Therefore, it has been proved by the management that the enquiry was conducted by the management in fair and proper manner. The rules of evidence Act relating to relevancy and admissibility are not strictly applicable in enquiry proceedings. The manager and the other officials of the bank were conversant with the handwriting and signatures of the workman. There was no need to examine the handwriting expert. The workman might have examined handwriting expert if it was necessary for his defence. I have gone through the findings of the enquiry officer in which evidence has been discussed

by him in proper manner. It can not be said that the findings arrived at by him is perverse and without any evidence. Consequently it is held that the departmental enquiry held by the management was conducted properly and fairly.

9. The charge sheet given to the workman has been exhibited as Ex. W2 in which the full details of the alleged misconduct have been given fully. Reply to the charge sheet Ex. W3 was filed by the workman shows that the allegations made in the charge sheet were understood by the workman. Therefore, it can not be said that he was misled in his defence.

10. The first charge relates to the misappropriation of Rs. 3000 by the workman on 23-8-1983. On that day Smt. Raj Kumari came to the branch to draw an amount of Rs. 1400 from her S.B. Account No. 3530. This amount was paid to her but in ledger Rs. 4400 were debited by making alteration in the figure of Rs. 1400 by the workman.

The surplus amount of Rs. 3000 was found in the counter drawer of the workman by Shri Inder Pal while he was replacing the rubber stamp of the cash department. The Second charge is that a customer Shri A. L. Mandal deposited a sum of Rs. 50 in his saving bank account No. 2249 but that amount was not credited to his account by the workman. Another customer Mr. Pandey deposited a sum of Rs. 150 in his saving account No. 1199 but that amount was also not credited in his account by the workman. These allegations are very serious and the workman has committed the misappropriation of bank money and customers money. Taking into consideration the gravity of the misconduct the punishment of the dismissal is not harsh and disproportionate. In paragraph 7(n) it has been alleged by the workman that the disciplinary authority and appellate authority did not taken into account the gravity of the misconduct and the previous record of the workman and other mitigating circumstances before passing the punishment order. But in this case, the record of previous conduct of the workman and facts relating to the extenuating circumstances have not been placed before this Tribunal for consideration. Therefore, the punishment of dismissal can not be held to be harsh and disproportionate.

11. On behalf of the workman, the case of Vijay Singh Yadav Vs. State of Haryana and others (1972 L.A.B. IC 713) has been cited in which it has been held by Hon'ble High Court of Pb. and Haryana that order of dismissal of an employee must be supported with reasons. This case law does not support the case of the workman as it has been discussed in the preceding paragraph of this Award. The another case law "Hans Raj Gupta Vs. State of Punjab" (1992 (1) Service Law Reporter 146) has been referred by the workman in which it has been held by Hon'ble Punjab and Haryana High Court that non-supply of copy of preliminary enquiry report may cause prejudice to the workman if the findings of the enquiry officer based upon it, but in the case under consideration the findings of the enquiry officer is not based on the preliminary enquiry. But it is based upon the evidence adduced during the course of regular enquiry.

12. On behalf of the workman, the case of State Bank of Mysore Vs. R. S. Sammantha 1985-I.L.L.N. 664 (Karnataka High Court) has been cited in which it has been held that the personal hearing should be given to the delinquent before passing the punishment order. This Tribunal has come to the conclusion in the preceding paragraph that the opportunity of personal hearing was given to the workman before imposing the punishment of dismissal. The workman has also admitted in his cross-examination that the opportunity of personal hearing was also given by the appellate authority before passing order on his appeal. Therefore, this case law does not support the case of workman.

13. The case of Avinash Chand Gupta Vs. Municipal Corporation of Delhi (1993(3) S.C.T. 321) in which Hon'ble Delhi High Court has held that the penalty of dismissal is of very serious nature so it should not be imposed without considering the gravity of the charges. In this case law the charge of negligence and dereliction of duty was proved. Consequently, the Hon'ble High Court set aside the penalty of dismissal and substituted stoppage of two increments with cumulative effect. But in the case under consideration, the money has been misappropriated by the workman as detailed in the charge sheet. Therefore, his case law does not hold the workman in this respect.

14. Taking into consideration, all the facts and evidence placed before this Tribunal, it has been found that the departmental enquiry was conducted by the management against the workman in fair and proper manner. Therefore, the action of the management in dismissing the workman is justified. The reference is answered by holding that the action of the management of Indian Bank in dismissing Shri R. S. Bali from service is justified. He is not entitled to get any relief from the management. Appropriate Govt. be informed.

P. L. JATAV, Presiding Officer

Chandigarh.

30-5-2001.

नई दिल्ली, 22 जून, 2001

का. ग्रा. 1824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-2001 को प्राप्त हुआ था।

[सं. एल-17011/107/90-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd June, 2001

S.O. 1824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 22-6-2001.

[No. L-17011/107/90-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, NEW DELHI

I. D. No. 27/1991

In the matter of dispute :

BETWEEN

1. The Chief (Personnel), Life Insurance Corporation of India, Central Office, 'Yogakshema', Jeevan Bima Marg, Bombay-400021.
2. The General Secretary, Life Insurance Employees Association, 25, K. G. Marg, New Delhi.
3. The All India Insurance Employees Association, 24 Chittaranjan Avenue, Calcutta-700012.
4. The Western Zone Insurance Employees Association, 1/9A Laxmi Niwas, Manmala Tank Road, Mahim, Bombay-400016.
5. The All India LIC Employees Federation, Bombay Mutual Second Floor, Rustam Sidhwa Marg, Fort, Bombay-400021.
6. The All India Life Insurance Employees Association of India Building, 5th Floor, Room No. 49 Sir P.M.
7. The National Organisation of Insurance Workers Association 31A-B, Hashim Building Fifth Floor 19 Veer Nariman Road, Fort, Bombay-400023.
8. The Central Zone National Life Insurance Employees Association, 70 D Shyam Nagar (Sujatani) Kanpur-208013.

9. The All India National Life Insurance Employees Federation, C-27 Jeevan Kanchan, Off Veera Desai Road, Andheri (West) Bombay-400058.
10. The Akhil Bhartiya Jeevan Bima Nigam Chaturtha Shreni, Karamchari Sangh, 12 Chowranghee Square, Calcutta-700069.
11. Shri Alok Kumar Bose C/o Sri N. C. Bose, Vinoba Nagar, Distt. Bilaspur (MP) (L. 17012/180/90-IR-B(II)).
12. Shri Prabhakar Rao N., S/o Sri Manjunatha Rao, "SD" Seetha Sadan, Nittur P.O., Udupi-576103. (L. 17012/176/90-IR-B(II)).
13. Shri Raj Kumar, C/o Sh. Santosh Bhatnagar, 18-Arjunpuri, Behind Kamal Kirana Store, Imliwala Fatak, Jaipur. (L. 17012/123/90-IR-B(II)).
14. Shri Pradeep Kumar, C/o Santosh Bhatnagar, 18 Arjunpuri Behind Kamal Kirana Store, Imliwala Fatak, Jaipur (L-17012/124/90. IR.B(II)).
15. Shri Mohd. Raffik, Co Santosh Bhatnagar, 18 Arjunpuri, Behind Kamal Kirana Store, Imliwala Fatak, Jaipur. (L. 17012/125/90-IR-B(II)).
16. Shri Hari Singh, C/o Santosh Bhatnagar, 18 Arjunpuri, Behind Kamal Kirana Store, Imliwala Fatak, Jaipur. (L. 17012/126/90-IR-B(II)).
17. Shri Jagbir Singh, C/o Santosh Bhatnagar, 18 Arjunpuri, Behind Kamal Kirana Store, Imliala Fatak, Jaipur. (L. 17012/127/90-IR-B(II)).
18. Shri Jagdish Nargin, C/o Shri Santosh Bhatnagar, 18 Arjunpuri, Behind Kamal Kirana Store, Imliwala Fatak, Jaipur. (L. 17012/132/90-IR-B(II)).
19. Shri Maroj Kr. Ram, C/o Chhabila Ram, DGMS Office, P.O. and Distt. Dhanbad (Bihar) (L.17012/114/90-IR-B(II)).
20. Shri Tarun Kumar N-Thaniel, Police Line, Hirapur, Hari Pura, P.O. and Distt. Dhanbad. (L. 17012/141/90-IR-B(II)).
21. Shri Sanand Kumar C/o Shri Rajendra Nath Prasad (Cashier) Accounts Section 1, DGMS, Office, P.O. and Distt. Dhanbad. (L. 17012/142/90-IR-B(II)).
22. Shri Dalip Kumar Prasad, Ex. Typist, C/o Shri R.N. Prasad, Account Section, DGMS, Dhanbad. (L. 17012/143/90-IR-B(II)).
23. Shri Kailashwar Kisku, C/o Ruplal Kisku, Vill. P.O. Damodarpur. Dhanbad. (L.17012/144/90-IR (B(II)).
24. Shri Haradhan Rajwar, Asstt/Typist, C/o Shri Hangle Rajwar, Village Lobarikuli, P.O. Saraidhala, Dhanbad. (L. 17012/145/90-IR-B(II)).
25. Shri Ajay Kumar C/o Shri G. Paswan, Qr. No. III/67, Jagiwan Nagar Dhanbad. (L. 17012/146/90-IR-B(II)).
26. Shri Sudhir Kumar Murmu, Vill. Chaldhoba, P.O. Pradhan Khanta, Vir Mugma, Distt. Dhanbad. (L. 17012/147/IR. B(II)).
27. Shri Homanta Khamrai, Vill. Barumuri, P.O. Baluk Chapra, Via Mugma, Dhanbad. (L. 17012/148/90-IR. B(II)).
28. Shri Ganesh Prasad Rajak, C/o Shri Harilal Rajak, at Rangaland Qr. No. 51, (M/N O.H. P.O. Dhanbad, Distt. Dhanbad. (L. 17012/149/90-IR B(II)).
29. Shri Rasik Lal Bouri, C/o Sri Manpuran Bauri, At and P.O. Chandankyari Dhanbad. (L. 17012/150/90-IR. B(II)).
30. Shri Hango Oraon, Coal field Timber Chiragora, P.O. and Distt. Dhanbad. (L. 17012/151/90-IR. B(II)).
31. Shri Niranjan Das, At and P.O. Chandankiyari, Distt. Dhanbad. (L. 17012/152/90-IR.(B(II)).
32. Shri Om Prakash Dad, C/o Sri H.N. Ram (Typist, Golakdin Open Cast Project, P.O. Jharia, Distt. Dhanbad-828111. (L. 17012/153/90-IR-B(II))

33. Shri Dhiran Chandra Bouri, C/o Sri Manpuran Bauri, At and P.O. Chandankyari, Dhanbad. (L. 17012/154/90-IR.B(II)).
34. Smt. Muthimal Varghese Puthenparambil House, Payyapady, P.O. Via Puthupally, Kottayam. (L. 17012/159/90-IR.B(II)).
35. Kr. Rekha Karunakaran, Karuna Niwas, Celloor, P.O. Kottayam-586003. (L. 17012/160/90-IR.B(II)).
36. Smt. G. Sobha, Kumbalathu Chirayil Kilirour PO., Kottayam Distt. (L. 17012/161/90-IR.B(II)).
37. Kr. Laila C. John, Chirapurath House, Manarcadu P.O. Kottay Distt. (L. 17012/162/90-IR.B(II)).
38. Km. Thulasi Devi K.H. Thulasi Mandiram, Neendoor P.O., Kottayam Distt. (L. 17012/163/90-IR.B(II)).
39. Km. Indu P. Charuthottathil, Aymanam P.O., Kottayam Distt. (L. 17012/164/90-IR B(II)).
40. Km. C.R. Jayalatha, Kizhakka Variam, Ettumanoor P.O., Kottayam. (L. 17012/165/90-IR. B(II)).
41. Km. Latha Kumari M.N., Mecheril House, Aymanam, P.O. Kottayam, Distt. (L. 17012/166/90-IR. B(II)).
42. Km. S. K. Sudha, Sudha Mandiram, Edavattom P.O., Thalavolaparambil, Distt. Kottayam (L. 17012/167/90-IR.B(II)).
43. Km. Ajaya Kumari K., Kalluveettikal House, Nzhavoor, P.O. Kottayam. (L. 17012/168/90-IR. B(II)).
44. Smt. Jolly Jarob, Pallathara Cheruvellil, Kurichy PO., Sachirotthamapuram, Kottayam. (L. 17012/181/90-IR. B(II)).

Versus

The Sr. Divisional Manager, Life Insurance Corporation of India, 2 K.G. Marg, Nw Delhi.

2. The Branch Manager, Life Insurance Corporation of India Magerpara, Bilaspur (MP).

3. The Divisional Manager, Life Insurance Corporation of India, Divisional Office, Jeevan Krishna, Post Box No. 8, Udupi-576.

4. The Regional Manager, Life Insurance Corporation, Jeevan Prakash, Bhawani Singh Marg, Jaipur.

5. The Divisional Manager, Life Insurance Corporation of India, Divisional Office, Jamshedpur, Distt. Singhbhum (Bihar).

6. The Sr. Divisional Manager, Life Insurance Corporation of India Divisional Office, Jeevan Prakash, P.O. No. 1001 Patom, Trivandrum-695004.

APPEARANCES :

Shri S.S. Jain for Life Insurance Employees Association.
Shri S.S. Jain for Jolly Jacob and Ors. Kottayam.

Shri B.K. Pal for all India Life Insurance Employees Association.

Shri Inderjeet Singh for All India Insurance Employees Association and Western Zone Insurance Employees Association.

Shri M.P. Patvardan for National Organisation of Insurance Workers.

Shri Sukumar Mukherjee for Akhil Bhartiya Jeevan Bima Nigam Chaturth Shreni Karamchari Sangh.

Shri R.C. Sachan for All India Life Insurance Employees Federation.

Shri R. Singaravelan for E. Prabhavati and others.

Shri P. Mahadevan for Tamil Nadu Terminated full time temporary LIC Employees Association with Shri R. Mohan.

Shri K.V. Appa Rao for All India National Life Insurance Employees Association/Federation.

Shri S.C. Shukla for Central Zone National Life Insurance Employees Association.

Shri S. K. Taneja A/R for the Management with Shri Ramchandran, V.K. Rai and Shri K.K. Sharma.

AWARD

Finding that an industrial dispute existed between the management of the Life Insurance Corporation of India, (hereinafter referred to as Corporation) and their workmen regarding the absorption in regular and permanent service of the employees of the Corporation belonging to category 3 and 4 and working as temporary/badli and part time. The Central Government in the Ministry of Labour vide order No. L-17011/107/90-IR-B(II) dated 4-3-91 has referred the dispute to this Tribunal under section 10(1)(d) and 2-A of the Industrial Disputes Act 1947 (hereinafter referred to as Act) for its adjudication on the following terms:

"Whether the action of the management of Life Insurance Corporation of India in not absorbing Badli temporary and part time workmen employed in the establishment of LIC after 20-5-85 is justified? If not, to what relief the workmen are entitled."

2. The dispute has been raised by the workman of the aforesaid category in individual capacity and it has also been espoused by the various unions and associations of these workmen of the divisions and zones of the Corporation throughout India. In the order of reference the description of these unions and associations have been given from serial No. 4 to serial No. 12 as follows:—

4. The General Secretary, Life Insurance Employees Association, 2, K. G. Marg, New Delhi.
5. The All India Insurance Employees Association 24, Chittaranjan Avenue, Calcutta-700012.
6. The Western zone Insurance Employees Association, 1/9A Laxmi Niwas, Manmala Tank Road, Mahim, Bombay-400016.
7. The All India LIC employees Federation, Bombay Mutual Second floor, Rustam Sikhiwa Marg, Fort, Bombay-400023.
8. All India Life Insurance Employees Association India Building, 5th floor, Room No. 49 Sir P.M.
9. The National Organisation of Insurance Workers Association 3/A-B, Hashim Building, 19 Veer Nariman Road Fort, Bombay-400023.
10. The Central Zone National Life Insurance Employees Association, 70 D Shyam Nagar (Sujatganj) Kanpur-208013.
11. The All India National Life Insurance Employees Federation, C-27 Jeevan Kanchan, Off Vera Desai Road, Andheri (West) Bombay 400058.
12. The Akhil Bharatiya Jeevan Bima Nigam Chatuitha Sreni, Karmachari Sangh, 12 Chowranghee Square, Calcutta-700069".

The names of the workmen who have represented their case on individual basis have been mentioned at Sl. No. 12, 14, 16, 17 to 23 and then from 25 to 39. Out of these workmen shown at serial No. 14, 16 and from 25 to 36 did not appear in the case. The workmen shown from serial No. 17 to 23 though appeared but at the later stage case proceeded ex parte against them. Workmen mentioned at serial No. 37 to 39 remained absent. Besides these workmen more workmen shown from serial No. 41 to sl. No. 51 belonging to Kottayam District have also been made party. These workmen have been represented by their authorised representative.

3. Apart from these Unions, Associations and workmen on the implement of the application Tamil Nadu terminated full time temporary LIC Employees Association and of F. Prabhawati and others have also been impleaded as a party in the case. F. Prabhawati and others were impleaded vide order dated 1-12-93 when the Tamil Nadu terminated temporary full time LIC Association was impleaded vide order dated 6-4-95.

4. In the case of Tamil Nadu terminated full time temporary LIC employees Association Corporation has not filed its written statement and on behalf of the association no rejoinder could be filed.

5. It is to be noted that connected with the dispute prior to the present reference other references were referred to the National Industrial Tribunal (hereinafter referred to as NIT) and were adjudicated upon beside it number of petitions were also preferred and decided by the various High Courts of India.

6. Hence before dealing with the present case I feel it necessary that we should get an idea of the past history relating to the dispute because it will have a very strong bearing in the present case.

7. The corporation was a creation of Statute namely Life Insurance Corporation Act, 1956 (hereinafter referred to as LIC Act, 1956). To provide for the nationalisation of Life Insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the corporation and for matters connected therewith or incidental thereto. Its section 48 enables the Central Government to make rules to carry out the performance of the Act by notification in the official Gazette Section 49 sub clause (1) empowers the corporation to make regulations not inconsistent with the LIC Act, 1956 and the rules made thereunder with the previous approval of the Central Govt. by notification in the Gazette of India to provide for all matters for which provisions expedient for the purpose of giving effect to the provisions of the Act. Section 49(2) of the LIC Act, 1956 lists certain matters for which regulations may without prejudice to the generality of the power conferred by sub-section (1) be made. The LIC Act 1956 was amended by the Amendment Act 17 of 1957 with retrospective effect. Sub clause (bb) of sub-section 2 of section 49 of the amended Act, 1957 provides for the terms and conditions of service of the persons who have become employees of the corporation under its section 11 sub-clause (1). By the authority vested in the corporation under clauses B and (bb) of sub-section (2) of section 49 corporation framed regulation defining the terms and conditions of service of the staff of the corporation. It is known as LIC of India (Staff) Regulations 1960 (hereinafter referred to as LIC Regulations 1960). The Regulation was notified in the Gazette of India No. IV dated 23-7-1960 and it came into force from 1-7-60. It is pertinent to note that although under the regulation only a two types of employment in service such as (i) regular employees (ii) temporary employees have been provided for and the employment in the capacity of badli and part time is not provided there does not appear a specific nomenclature there but said type of employment is also prevalent in the Corporation.

8. It appears that earlier a large number of employees of Class III and IV were employed by the Corporation in the capacity of Badli temporary and part time and what should be the wages and other conditions of service of badli temporary and part time workmen of the LIC of India as well as the conditions in their absorption in their regular cadre.

9. The said reference was taken on the file of the National Tribunal as reference No. NTB-I of 85. At the initial stage the Western Zone Insurance Employees Association Bombay and the Central Zone National Life Insurance Corporation Employees Association Kanpur were only parties to the reference besides the Corporation. Later on all the unions of all the regions and the zones in the country and joined as parties. They all filed their statements and put forth their claims.

During the course of the proceeding and interim award was passed by the National Industrial Tribunal on the prayer of the workman for restricting the Corporation from recruiting or absorbing any person without prior permission of the Tribunal.

According to the interim award the corporation was restrained from making any new appointment except where persons had to be appointed over the above the then existing vacancies against which the concerned workmen who were working or had worked with the corporation in their capacity as badlis temporary or part time workmen and who would be concerned in the reference had to be appointed and that where an employee was appointed from amongst the badlis temporary or part time workmen against any vacancy he would have to be continued as long as the vacancy continued provided an undertaking to be given that no benefit would be claimed.

10. After a long drawn hearing in the said reference an award in invitam was given by the Hon'ble Mr. Justice R. D. Tulpuke on 17th April, 1986. The award was given on the basis of the suggestions invited from the parties both from the workmen and from the management of the corporation. The parties had given the mandate to the said National Industrial Tribunal to base its award on any of the suggestions made by the parties after making necessary modifications. These suggestions were made in sealed covers and were opened in the open court and the parties were heard on the rival suggestions and also on the suggestions made by the Presiding Officer himself before finalising the award. The suggestions made by Hon'ble Presiding Officer were incorporated in the order dated 14th March, 1986.

11. In the final award it was held that only those workmen who had worked during the period from the month of January 1, 1982 to the month of May 20, 1985, the date of the reference be considered as eligible for absorption and a workman claiming absorption in Class III post should have worked for 85 days in a period of two calendar years and a workman claiming absorption in Class IV post should have worked for 70 days in a period of three calendar years. It was also held that the calculation of the number of days of work should be upto date of reference. The corporation was directed to appoint a screening committee to consider suitability and desirability of such eligible workmen for absorption. It was also directed that the workman considered to be suitable and desirable for the absorption should be absorbed against vacancies which existed in the Corporation as on 31st March, 1985 and which may arise subsequently. Corporation was also directed not to recruit outsiders in a particular division till such lists were exhausted. Directions given in the award on the question of absorptions have been mentioned in paras 40 to 60 and 66. Since the question of the applicability of the award in the present case has been raised by the Corporation in order to appreciate the points in controversy in this respect I feel it necessary that the relevant paragraphs of the award dealing with the determination of point of absorption of the workman should be mentioned in extenso. Beside it I also feel it necessary to mention first about the interim order dated 14-3-86 passed in the case.

"Pursuant to the directions on 6th March, 1986 parties have given their suggestions in sealed covers. Most of the union suggestions say that everyone should be appointed but generally there is a consensus that these people should be considered and given preference

in appointments. The minimum emoluments payable to these workmen have also been suggested. There is also sensible response from the Management with regard to employments. I take that all these are Class III and Class IV appointments. One of the suggestions which I am making was that part time employment in Class III should be totally stopped. Parties say that there is an part-time employment in Class III. We can straight away ignore part-time Class III employees.

The management says that they have provision for 10 per cent leave reserve. The unions have also given a list of the workmen who have been in Badli employment, temporary employment or part-time employment during the last 3 years. We have to take a cut-off year and it is better if we go back upto 1-1-82. Most of the unions have suggested 1983. I am suggesting 1982. Present reference came up in 1985 and since then normally all employees will have to be considered. We may take 1-1-82 as cut off date. All those who were in employment after 1-1-82 i.e., in employment in various capacities with the LIC can be found out. I also want to say that only for purely contract work, such as shifting of records etc., contract labour should not be used for regular work and vice versa. That is generally the suggestion of the unions too.

Since over and above this 10 per cent leave reserve the LIC is employing Badli temp & part time employees it is necessary to find out how much more regular employment there can be and how much more work, these people did in Terms of man hours & days. You can find out the number of man hours i.e., number of hours worked by these workmen. Then divide it by the number of hours per day. Thus we get the number of men. Then we may divide the number of men further by days. This will provide the requirement of men and days. From this we can find out how many more people are required over and above the 10 per cent leave reserve. As it is the Corporation is utilising men over and above 10 per cent and their requirement therefore is more than 10 per cent. Once we find out this we can ascertain what is the total availability of employment with the Corporation in which some of these people can be absorbed. Then we can decide whether this 10 per cent leave reserve can be increased to 12 per cent or so that these number of vacancies can become available.

All the number of vacancies are thus found then the next page which I am suggesting is that we may form pools of these workmen for every zone or division. For instance you may require more men in a certain division but the total zonal requirement may be smaller. Besides this it of a local employment. First we have to decide whether the break down should be formed

into a pool. There should be no permission to migrate from one pool to another. Once person is in the part time employees pool or in the temporary employees pool, he should remain in the same pool. But where a workman says that he also worked in a temporary or part time or casual workmen in more than one category, then we may have a problem but if there is any such occasion, we can consider it separately. These pools should be formed preferably at the divisional level. After forming the pool, then a screening committee or board should be constituted for each division, which should look into these persons and ascertain their suitability for employment considering their past record. While forming the screening committees, I suggest that such committees should consist of one local member and two other members from outside the division, so that local prejudice or bias would not be alleged in the matter of screening. After the screening is made all those employees should be placed in a panel in the order of their seniority. Wherever any future vacancies occur, they should be filled from these people only. Only when the list is completely exhausted, recruitment should be made from outside. Recruitment should not be made from open market unless the candidates in the pool are completely absorbed.

If there are part-time workmen, then an hourly scale should be prescribed. Instead of making payment for three hours, two hours etc. we should fix an hourly rate. If the workman works more than half an hour, he should be treated as having worked for an hour, and for work for less than half an hour, he should be treated as having worked for an hour, and for work for less than half an hour he should be treated as having worked for half an hour. So far as others are concerned, they should be given wages at the minimum of the scale applicable to them, plus casual leave and holidays falling in between. Unions suggest that all benefits should be given. But that would entail enormous amount of record keeping. These two things should be available and after a number of days of service, earned leave and sick leave may be given at a particular rate".

12. To start with in para 40 the question of cut off year and cut off date has been dealt with and the cut off year and the cut off date has been fixed on 1-1-82. In paragraph 42 of the award rational for coming to decision fixing their cut off year and cut off date has been given and in paragraph 43 of the award the distinction between the workmen doing part time work on regular basis and those doing part time work as badlees have been mentioned. In paras 44 to 47 a direction in respect of the formation of pools has been given and it is also directed that pools should be prepared division wise and prescribed procedure to be followed for formation of the pools. It was again directed that three different pools for badlees

temporary and part time workmen should be prepared for the persons in the employment of the corporation from the commencement of the cut off period of 1-1-82. It was laid down that for all those persons who had worked from 1-1-82 till date of reference i.e. 20th May, 1985 and also till the date on which certain orders were passed directing that the existing employees services should not be terminated, the list of such employees was to be prepared for each category of workmen. It was also directed that in calculating number of days worked, work days only upto the date of reference should be counted. It nullified the advantage which some workmen could have obtained on account of the interim orders. Specific orders were given in respect of the workmen who had worked in different names and different capacities. The pool was to be made in accordance with the seniority which could be counted in terms of a days alone and not in the capacity in which the person worked, meaning thereby that if a person had worked in two capacities then total number of days for which he had worked in both the capacities should be treated as number of days for which he had worked and should be taken for seniority and ranking and not separately in class or kind of work which he has done.

13. Its paragraph 48 deals with the formation of Zonal Committees for screening for purposes of absorption of the workmen whose names were included in the lists (pools). In paragraph 55 guidelines to the screening committee has been given. Paragraphs 49 to 54 subsequently deals with the question of prescribing minimum number of qualifying days for being absorbed. After considering the suggestions of the parties the Hon'ble P.O. fixed 85 days in a period of two years as a qualifying period for class III employees and 70 days in a period of three years for class IV employees. Paragraph 56 provides about the specific directions regarding preparation of final list of workmen for their absorption. Paragraph 57 contains about the creation of the vacancies of the post for such employees and it is observed that the question no specific direction to the corporation in this regard can be given and the question of determining actual number of post required for the work of the corporation was left open to the corporation. However, corporation was directed to indicate its size in the light of the facts pointed out and indicated in the award and decide and determine additional vacancies and posts which the corporation should create with a view to obviate and stop for all times. Thereafter employment of badlee workmen and temporary workmen if possible. Paragraph 59 contains final directions. It is quoted below :

"After the screening committee has prepared lists of such suitable candidates and the corporation has determined and fixed number of posts and vacancies which it has for the purposes of being filled, if there is any excess of suitable candidates selected by the screening committee and included in the list, then they should be continued to be maintained in the pool for being employed for temporary performance of the corporation at a later stage. However, such a list should be confined as far as possible to the minimum so that such unfortunate employees know clearly what are the prospects of their

future absorption and should look after pastures elsewhere and not continue to hang on a remote possibility of future doubtful aspect of being observed in the corporation service.

14. Paragraphs 65 and 66 of the Award I find are most relevant in the case and thus both these paragraphs are quoted below :—

“65. In the light of the directions above with regard to observation and creation of additional post by the corporation I do not think that there would be any occasion in future for the corporation to employ workman in the temporary and badlee categories existing for the occasional and temporary increase in work which necessitate employment of temporary staff. In all probability would be only amongst class III cadre, in which case there could be no occasion and there need not be I think any case or situation require consideration or grant of any other benefit apart from the wage to such workmen.”

“66. I hope and expect that in the light of what has been said and a past exercise of the corporation situation where a large number of such employees could be engaged without adherence to any formalities or procedures by the various local managements would be completely eliminated and done away with and this kind of employment in the corporation history would be the last occasion. Excepting the temporary employment the corporation will have no occasion or necessity to employ badli workmen it is hoped in future. Though part-time employees will continue to be in existence for some more time as I have indicated, the corporation will also see its own way to absorb the part-time employees in its regular employment as far as possible and reduce the number of part-time employees to the minimum. However, whenever, hereafter any occasion or vacancy arises of regular employment in part-time categories and employment, then those who have worked part-time in accordance with their seniority should be given preference for absorption in the regular cadre of the Corporation's employment. This should be irrespective of the qualifying age for the entry into Corporation's service and qualification but subject to his being found suitable.”

15. Being aggrieved by the said award dated 17th April, 1986 The corporation preferred writ petition No. 1801 of 86 before the Hon'ble High Court of Bombay challenging the legality of the award. The writ petition of the corporation was dismissed by the Hon'ble High Court of Bombay vide order dated 14-8-86 but at the same time the Hon'ble High Court gave certificate of clarification. Pursuant thereto for the compliance of the award dated 17-4-86 the corporation while interpreting the award with respect to the absorption as recruitment issued as long as six circulars commencing from 17th September, 1976 to 25-2-1987. The workers union and association disputed the instructions given in aforesaid circulars and an industrial dispute was again raised. The Central Government in the Ministry of Labour had then made a

reference under Section 36-A of the Act to the Industrial Tribunal NII being presided over by Mr. Justice M. S. Jandar. The reference was registered as reference No. NTB (1) of 1987. The term of the reference referred to was of as follows :—

“Can the Award dated 17-4-1986 with special reference to paragraphs 44, 45, 46, 48, 49, 51, 52, 54, 55, 56, 57, 60, 64 and 66 and the interim order dated 14-3-86 be interpreted to mean that the Central Office of the Life Insurance Corporation of India is empowered to issue instructions/guidelines as contained in their circular issued in this behalf to implement the directions of the Award. If not, what could be the correct interpretation of various directions covered by the said paragraphs in the circumstances of the case. Whether the term “absorption” referred to at various places in the Award can be interpreted to mean “recruitment”?”

16. During the course of the hearing of the said reference an interim order was passed by the Hon'ble Tribunal restraining the corporation to make any recruitment from the open market during the pendency of the proceeding.

17. The Hon'ble Tribunal gave award which is dated 26-8-88. The Hon'ble Tribunal while answering the term of reference gave its own interpretation of the earlier award given by Hon'ble Mr. Justice R. D. Tuipule. The Hon'ble Tribunal has held that observations contemplated by the earlier award did not mean recruitment.

18. Corporation had then preferred S.L.P. before the Hon'ble Supreme Court of India against the said award dated 26-8-88 challenging about its legality. The appeal so preferred by the corporation was registered as SLP No. 14906 of 1988. The corporation had become successful in obtaining special leave. During the continuance of the said appeal a compromise/settlement was entered into between the corporation and 8 of the 9 unions. On the basis of the said settlement the Hon'ble Supreme Court passed order dated 1st March, 1989 pending final disposal of the appeal permitting corporation and the members of the said 8 unions to implement terms of the compromise by way of interim measure without any prejudice to the right and contentions of the members of other union which was left over in the settlement aforesaid. It is pertinent to note that on the impleadment application of the other left over association the Hon'ble Supreme Court vide order dated 7-2-1996 passed in civil appeal No. 1790 of 89 allowed the impleadment application of the association. In order to implement the said settlement pursuant to the direction of the Hon'ble Supreme Court the corporation gave appointments to a large number of such persons to the posts in class III as well as in class IV in various Divisions. Certainly the said appointment was given to the persons recruited on temporary basis between 1st January, 1982 to 20th May, 1985.

19. Thereafter the employees employed as temporary, badli and part-time after 20th May, 1985 raised demand for their absorption regularising too in the regular service. When their demands were not accepted by the corporation several writ petitions in this

respect were filed before the Hon'ble High Court of Madras. These writ petitions were filed before the Hon'ble High Court of Madras between the years 1989 to 1991. The writ petition No. 10367/89 filed was between the terminated full-time temporary LIC Welfare Association and Senior Divisional Manager, LIC, Khanjavar. This writ petition alongwith other writ petitions total 18 writ petitions were listed for hearing before the full bench of Hon'ble High Court of Madras. After hearing the parties of all the writ petitions the Hon'ble High Court of Madras gave judgment which is reported as 1993(1)LLJ 1030 between terminated full temporary employees welfare association and Senior Divisional Manager, LIC, Khanjavar. All the writ petitions were dismissed by the Hon'ble High Court of Madras.

20. Parties had then preferred civil appeal before the Hon'ble Supreme Court of India against judgment of the Hon'ble High Court of Madras. These civil appeals were numbered as SLP(C) 10393 to 10413/92 E. Prabhawati and others Vs. LIC of India and others. It appears that in the said civil appeal on the directions of the Hon'ble Supreme Court Corporation had framed a scheme for the regularisation of the employees who were granted ad hoc appointments for 85 days at intervals from time to time was placed before the Hon'ble Supreme Court. After hearing the parties by means of interim order dated 23-10-92 found the scheme as reasonable and was approved to the existence of the scheme contained in clauses (a) and (d) of paragraph 1 and the corporation was directed to proceed to regularise the employees eligible in accordance with the scheme. The clauses of (a) and (d) of the scheme have been reproduced in the order by the Hon'ble Supreme Court of India. With the aforesaid direction all the civil appeals were disposed of by the Hon'ble Supreme Court.

21. It appears that during the continuance of the hearing of the writ petitions before the Hon'ble High Court of Madras as stated above the present reference was sent to this Tribunal by the Central Government in the Ministry of Labour vide order dated 4-3-91. It also appears that during the continuance of the proceedings of the present reference E. Prabhawati and others sought their impleadment and vide order dated 1-12-93 of this Tribunal impleadment application was allowed.

22. In the reference the union have filed their statement of claim. Some of the workmen parties in the reference order have also filed their statement of claim jointly.

23. The written statements of corporation and rejoinder have been exchanged between the parties.

24. The case put forward from the side of the workman including the unions associations is almost on the similar facts.

25. Common case of the workman is that corporation was constituted by an Act of Parliament namely Act No. 31 of 1956 having power of framing regulation and its publication under section 49(2)(b)(bb). The corporation has actually framed regulation.

The corporation being the premier public sector enterprises has a continuous growth rate both in business as well as in surplus. Details of the growth rate and surplus are given in para 3 of the statement of claim filed by all India life insurance employees association Bombay mentioned at sl. No. 8 of the reference order.

26. It is further case of the workman that according to the regulation 8 of the Regulation only two kinds of employees viz (i) regular and (ii) temporary being only been regularised. Badlee and part time employment do not find place as a specific nomenclature but such employment are prevalent in the corporation. Corporation has been continuously employing workmen directly or through contractor as temporary badli and part time in centre also of its various offices throughout India. These types of workmen have been continuously working in different capacities such as peon shamals, waterman, watchmen-cum-pump man, lift man-frash, test house attendants, sweepers, cleaners, assistant typists etc. on daily rated basis against permanent and other vacancies. The work volved is of regular and permanent nature. Although on the basis of the requirement of the work large number of employees are needed to be recruited on regular basis but the corporation has always resorted to engage workman as temporary badli and part time and has been indulging in unfair labour practice by denying such workmen benefit of their absorption in the regular service and also their wage condition and increment in salary, and other service benefits available to regular employees of their categories.

27. The case again is that corporation has been engaging large number of employees in the aforesaid categories through various contractor and other agencies, but these employees are unreasonably treated by the corporation as outsiders and not its employees when for every purpose these employees should be treated as employees of the corporation and should be given all the benefits like its other employees doing similar job. The corporation has been following all the time the practice of hire and fire by engaging persons temporary badli and part time and removing them from service before they could complete the required period of time by them so that they may not be able to claim a right of

that they may not be able to claim a right of regularisation in the service. The Corporation after removing such employees from the service used to employ other persons in their place. These types of workmen have also been discriminative with other counter parts working on regular basis in the manner that they have been denied the similar service benefits including their pay on the principles of equal pay for equal work. Again these types of workmen after their engagement were allowed to continue in service for indefinite period by giving artificial break in service despite the fact that vacancies of permanent nature in the job existed the workman for which such appointment were made actually existed the employees were continuing to work as temporary badli and part time and were not absorbed in the regular service. Their case also is that the workmen so employed were also exploited by the corporation. The incident of exploitation have been given in para 18 of the statement of claim of All India Life Insurance Corporation of India Employees Association Bombay.

28. The specific case of the Life Insurance Employees Association New Delhi taken in its statement of claim is that the corporation had failed to make an adequate number of leave reserves thereby resulting into the situation of the need for the corporation to employ such workmen as temporary badli and part time. The temporary and badli employees should be paid their wages at par to the counter parts working as permanent employees and other service benefits available to the permanent employee should also be given to them. Such workmen who had continued to work prior to 20th May, 1985 were not even taken into consideration for the purposes of absorption into regular cadre as per their respective capacities at the time of the implementation of the award given by Mr. Justice Tulpule. It is also stated that the workman employed on or after 20-5-85 and have completed 40 days of their working should be given absorption in permanent cadre without any other conditions. Again it is stated that the workman belonging to class IV category such as welder, lift man, chowkidars, cleaners electricians plumbers helpers etc. have not been considered at all for the absorption in permanent cadre so far. The handicapped working as peon have also not been given absorption. In this case discriminatory attitude have been adopted by the corporation by denying absorption to the persons on the ground that they were handicapped but the others being in similar situation were given absorption. It is subsequently stated that Shri Jagan Pal Singh and Netrapal Singh handicapped workmen were denied absorptions on the ground of their being any handicapped when Om Parkash and Suresh Chand were also handicapped were appointed in the permanent capacity Akhil Bhartiya Jeevan Bima Nigam Chaturth Shreni Karamchari Sangh Calcutta alleging 2204 GI/2001—10

itself to be the sole union of class IV employees has prayed for the absorption of the badli/temporary and part-time workmen engaged through contractors tenants and licensees associations prayer for direction regarding payment of wages to these workmen similar to the workmen working as permanent has also been made. On behalf of the All India Insurance Employees Association Madras it is alleged that the recruitment procedure of 1979 of the corporation deemed to have been waived and the workman concerned should not be asked to produce or fulfil any of the requirement of it. According to the case of All India LIC employees federation appointment made in temporary capacity against regular nature of work and not as stop gap arrangement there is an element of pendency as well as continuance of service as each one of the workman had worked for more than 85 days or 70 days belonging to the class III and class IV workmen respectively. It is also stated that the Regulation 8(2) of the Regulation 1960 being arbitrary mala fide discriminative and illegal has no application.

29. The case of E. Prabhawati and others is related with the terminated employees of the state of Tamil Nadu. The case of the workman subsequently is that they were appointed in class III and class IV post in various branches of the corporation in the State of Tamil Nadu through the procedure established by law for certain number of days subsequently mentioned in the letter of appointment issued to them. Some of the workmen were appointed even orally but after following the procedure-it is stated that after expiry of the specified period mentioned in the letter of appointment service of most of the workmen were extended for a further period of 30 days and more and thereafter their services were terminated finally. It is again stated that the appointments in the aforesaid categories of classes III and IV were mostly done through respective district employment offices and on the basis of their performance in the interview conducted by the concerned authorities of the corporation. In some of the cases workmen were called for recruitment of temporary assistant typists/sub-staff and were interviewed by the committee legally constituted for that purpose. It is also stated that some of the workmen had worked for nearly 150 days and more than that and some of them were appointed temporarily on the aforesaid post for a period of 85 days and thereafter their services were terminated after the expiry of the period of 85 days. New candidates were recruited through the district employment office of the concerned district in place of the terminated employees aforesaid. It is also contended that clause 8 of the recruitment procedure prescribed for the recruitment of sub-staff but there is nothing that written test would be taken for such appointment. The appointment were mainly done by ways of oral interviews. It is further stated that it would be wrong to say that the workman appointed in classes III and IV post nor by way of written test were not eligible for their absorption in the respective post.

30. The Corporation has filed its written statement against the statement of claim filed by the workman as well as by the Unions. A common objections is taken by the Corporation against all the statement of claims of the workmen. The plea at the first instance as taken by the Corporation is about the incompetency of the reference as well as incompetency of the

workmen belonging to the categories of temporary, badlee and part-time regarding their absorption in the regular cadre. It is submitted by the corporation that the workmen have no case and their claims are liable to be rejected. The corporation has taken the preliminary objections in this respect at the first stage. The assertion of the corporation firstly is that the workmen were appointed on temporary basis on exigencies of the work and on expiry of the period of their employment they seized to be the employees of the Corporation and thus a question of absorption of such employees never arises because they were not the regular employees of the corporation. Secondly that the corporation was governed by the statutory rules and regulation concerning recruitment of the staff and it was governed by the recruitment instructions 1979 which was statutory and binding on the corporation. Recruitment of the regular employee could be made as per provision of the said Instructions. Temporary and Badlee employees were employed as a stop-gap measure without following procedure prescribed in the LIC Recruitment of (Class III and class IV staff) Rules, 1979 which became enforceable on 27-11-79. The workmen of the present dispute cannot claim their absorption as regular employees without following the procedure prescribed in the recruitment rules for recruitment of regular employees. Even if these employees are held to be regular employees their absorption in the permanent service can be done only after following procedure set out in recruitment rules. Thus according to the corporation the action of the management in not absorbing temporary employees is fully justified and the workmen are not entitled to any relief.

31. On facts the corporation has stated that it is a body corporate established under Section 3 of the LIC Act, 1956. Under Section 6(1) of the LIC Act Corporation is enjoying to carry on life insurance business and to exercise its powers under the Act as to secure that life insurance business is developed to the best advantage of the community. Sub-clause II of LIC Act empowers the corporation to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the corporation. Section 7 of LIC Act provides for the transfer to and vesting in the corporation all the assets and liabilities pertaining to the controlled business of all consumers. Section 23 of LIC Act provides corporation may employ such number of persons as it thinks fit for the purpose of enabling it to discharge its functions under the LIC Act. Under its Section 48 Central Government makes rules to carry out performance of the Act and in particular and without prejudice to the generality of the foregoing power providing for all or any matter specified in sub-section (2) of said Section 48. Further its Section 49 empowers the corporation to frame regulations not in consistent with the act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the LIC Act. This power of framing regulation was subject to the provision of approval of the Central Government and by notification in the Gazette of India.

32. It is again stated that in exercise of the aforesaid power the corporation had in the year 1960 framed regulations namely staff regulation defining terms and conditions of service of its employees. It is further stated that the LIC Act was amended in the year

1981 by the LIC (Amendment Act, 1981) (hereinafter referred to as Amendment Act) and as a consequence of the amendment the provision in Section 49 sub-clause II of the LIC Act for framing of regulations relating to the terms and conditions of the service of the employees was taken away and vested in Central Government under Section 48 of the Amendment Act but however, as per provisions of Section 48-2(A) of the Amendment Act the regulations and other provisions as in force immediately before the commencement of the Amendment Act with respect to the terms and conditions of service of employees including those who became its employees on the appointed day under Section 11(1) of the LIC Act. It also provided that power to frame rules relating to terms and conditions of service of the employees of the corporation would include the power to give retrospective effect to such rules and also the power to amend by way of additions/ variations or repeal, regulations and other provisions referred to in sub-section 2-A of Section 39-A of the Amendment Act with retrospective effect from a date not earlier than 20th June, 1979. It is again stated that in exercise of the power so conferred by Section 48 of the LIC Act, Central Government had amended various provisions of staff regulations besides consulting some rules in the said staff regulations. In view of the fact the corporation has stated that the regulations were statutory rules having effect not with standing anything contained among others provision of the Act or in any other law or in any agreement, settlement, award, or other instrument for the time being in force.

33. It has again been stated by the Corporation that under rule 8 of the Staff Regulation the authorities mentioned therein had a power to employ staff in class III and IV category on a temporary basis subject to such general or special directions as may be issued by the chairman of the corporation from time to time. Again under its sub-rule 2 no person so appointed on a temporary basis should only be reason of such appointment be entitled to absorption in the service of the corporation or claim preference for recruitment to any post.

34. It is again stated by the corporation that under Section 23 of the LIC Act the corporation was vested with the power of making recruitment of persons in service and it had recruited a number of persons in accordance with the rules relating to the appointment of the staff on a regular basis. The extent of the rules relating to such recruitment were those laid down by the recruitment rules issued by the chairman of the corporation in exercise of his statutory powers. The recruitment rules relate to such matters of recruitment of employees in class III and class IV cadre as conditions of eligibility method of selection for recruitment. Besides above staff taken on its regular establishment the corporation on occasions had engaged few persons on temporary badlee part time basis under various stations mentioned in detail in paragraphs 9-A, 9-B and 9-C of the written statement.

35. The corporation has further stated that in the case of all these temporary employments the procedure prescribed by the recruitment rules was not gone through for the obvious reason that the engagement of such persons was limited to the minimum needs of the situation. Some of the employees were even em-

ployed without record to the minimum eligibility standards or the merit or suitability requirements and such employees could not look forward for appointment on a regular basis.

36. Again the corporation has stated that it had engaged a limited number of persons on a part time basis where duration of the work in a day was limited not more than four hours and in this manner there was no work to be performed by the incumbent for the whole of the day and the quantum of work to be carried out being limited. There was no need for their engagement on a whole time regular basis. These persons were generally sweepers and gardeners. Sweepers were engaged on a part time basis where corporation office was established in rental premises and the sweepable area was less than 10000 sq. feet. In the like manner the gardeners were also appointed in some of the offices on a part time basis on account of the fact that there was no work to be provided for the whole duration of the day. These persons engaged on part time basis were free to take any other employment and in fact most of these part time employees were employed in other establishments.

37. The corporation has further stated that the badlee employees were those selected candidates a panel of persons maintained at the divisional headquarters which panel was prepared after compliance with the procedure specifically laid down for the purpose. Generally they were persons whose names were sponsored by the employment exchange and whose employment was limited to need base categories namely watchmen, liftmen and sweepers in class IV. Besides badlee appointments were made against the leave vacancies also. No badlee employee was generally engaged for more than 85 days at a stretch and in excess of 220 days in a period of 12 months. The temporary employees were not appointed out of any panel nor their names were sponsored by the employment exchanges. The temporary employees were being engaged for a maximum period of 85 days at a stretch and for not more than 2 spells of 85 days in two consecutive years.

38. The corporation has then stated in detail about the earlier reference made to National Industrial Tribunal being provided over by Mr. Justice R. D. Tulpule, Bombay and the reference made to Hon'ble Mr. Justice M. S. Jandari and proceedings held before those tribunals and the decisions given therein. It is contained in paras 14 to 20 of the written statement. Thereafter the corporation has stated in detail about filing SLP No. 14906 of 1988 before the Hon'ble Supreme Court of India against the award dated 26-8-88 given by Hon'ble Mr. Justice M. S. Jandari. The corporation has also stated about the facts relating to the compromise and settlement arrived at between the parties before the Hon'ble Supreme Court in the said SLP No. 14906 of 1988 and the order dated 1-3-89 passed by Hon'ble Supreme Court granting special leave and ordering for the implementation of the compromise petition by way of an interim measure without any prejudice to the right and contentions of the members of the one union who had not entered into any compromise with the management. The copies of the terms of compromise and the order of the Hon'ble Supreme Court

of India passed on 1-3-89 have been annexed to the written statement as Exs. C-I and C-II respectively.

39. The corporation has further stated that in accordance with the aforesaid order dated 1st March, 1989, of Hon'ble Supreme Court of India corporation had appointed over a period of time a number of persons in terms of the compromise. According to the corporation during the period from 1985 to 1990 there was no recruitment from the open market. Due to the restraint placed on corporation by the orders of the aforesaid both the national industrial tribunals and the proceedings connected therewith before the Hon'ble Supreme Court of India. The corporation has stated that the workmen of the present dispute are the aforesaid persons who were appointed by the corporation under the distressed circumstances and these workmen according to the corporation also are not entitled to claim absorption in the regular service of the corporation.

40. It is again stated by the corporation that as stated above the staff regulation has clearly laid prohibition on the persons appointed on temporary basis to claim their appointment or any preference in the recruitment in the regular service of the corporation. Neither such workmen can claim their absorption in regular cadre nor this tribunal has jurisdiction to grant any such relief to the workmen.

41. The corporation has also mentioned about the facts of filing writ petitions by some of the workmen. After the said award given by the Hon'ble NIT before the Divisional Bench of Hon'ble Allahabad High Court claiming absorption in the corporation on account of the temporary appointment during material time. The writ being registered as CMW No. 13583 of 1988 and also about the fact of dismissal by the Hon'ble High Court of Allahabad it has again stated about the factum of filing writ petitions before Hon'ble High Court of Madras and Andhra Pradesh by the workmen who were appointed on a temporary basis subsequent to the dismissal of their civil Misc. writ petition No. 153832 of 1988 as withdrawn vide order dated 20th February, 1989 passed by the Hon'ble Supreme Court of India. It is stated that all these writ petitions filed for their absorptions to the regular service of the corporation and these writ petitions were dismissed by the Hon'ble High Courts. In the last corporation has reiterated that these workmen are those who had worked temporarily for very short spells of time and they are not entitled to claim any preference in the matter of their appointment to the services of the corporation on any basis. The present reference according to the corporation is bad in law and devoid of any merit and it has to be rejected both on preliminary grounds and on merits.

42. In the rejoinder filed on behalf of the workmen against the written statement of the corporation mostly the allegations made in their statement of claim have been reiterated. Both the parties have led oral evidence in support of their cases. On behalf of the workman as many as 260 affidavits of the workmen have been filed. Out of these only 30 persons could appear for their cross-examination and they proved their affidavits. These affidavits have been marked Ex. WW1 to WW13. These workmen have mostly stated about their period of employment and conditions of their employment.

43. On behalf of the management the affidavit of Mr. P. D. Kini has been filed. He has also been cross-examined on behalf of the workman as MW1. The affidavit filed by him has been marked as MW1/I. He has stated about the case of the corporation as taken in written statement.

44. Arguments of both the parties were heard at length. Each of the union and also the workmen in individual capacity through their authorised representatives have advanced lengthy arguments. The corporation's relevant materials available on the record have also been perused carefully.

45. At the first instance it is urged on behalf of the corporation that the reference in question is incompetent and this tribunal has also no jurisdiction to grant relief to the workmen with regard to their absorption in the regular cadre of their service. The argument in this respect specifically is that workmen concerned in the present dispute have been employed in exercise of the power vested under rule 8 of the regulation. Rule 8(2) of the Regulation provides that no person appointed as temporary staff shall by reason of such appointment be entitled to absorption in the service of the corporation or to claim preference for recruitment to any post.

46. It is submitted that the corporation was created under L.I.C. Act, 1957 and by virtue of power vested in it under its Section 49 staff regulation 1960 was framed providing conditions of the service of the employees of the corporation. The L.I.C. Act, 1956 was subsequently amended by Act No. 1 of 1981 and thus in view of the amendment in incorporated under Section 48(2) a new sub-section 70A of Section 48 was inserted by which the Regulations and other provisions as in force immediately before the commencement of Amendment Act, 1981 with respect to the terms and the conditions of the service of employees shall be deemed to be rules made under sub-section 2(cc). Thus in view of the said amendment the Regulations and other provisions relating to the terms and conditions of the service of the employee shall be deemed to be rules made under Section 48(2)(cc) of L.I.C. Act, 1956. Hence the provisions of Sub-section 2 of rule 8 of Regulation are statutory and the provisions of I.D. Act have no application in respect of the matter governed by Sub-section 2 of rule 8 of the Regulation namely claim for absorption of temporary staff in the service of the Corporation. The corporation has further submitted that in the event of any conflict between the provisions of the I.D. Act and those of Regulation, provisions of Regulation shall prevail and thus the present reference is incompetent. Further since rule 8(2) of Regulation provides absolute prohibition against absorption of temporary staff, this tribunal has no jurisdiction to grant relief of absorption to workmen and if granted it would violate the statutory provisions contained in rule 8(2) of Regulation.

47. The next contention of the corporation is that both the awards of Honourable Mr. Justice R. D. Tulpule and of Mr. Justice M. S. Jandar have no application in the adjudication of the present reference. The specific argument of the corporation in this respect firstly that the award of Hon'ble Mr. Justice Tulpule has overstepped its jurisdictions under Sec-

tion 10(4) of the I.D. Act. According to the Corporation the order of reference has indicated that the tribunal should lay down (a) wages and other service conditions, (b) and condition of absorption in regular cadre of the badlee/temporary/part time workmen of the corporation. It was not directed that time schedule for giving service benefit including absorption of such workmen be also decided. But the Tribunal overstepped the reference order by fixing cut of date as 1-1-82 to 20-5-85 of the workmen under employment for the benefit of their award. It according to corporation is exceeding the scope of Section 10(4) of the I.D. Act. The order of reference only required the tribunal to lay down the conditions of absorptions in regular cadre of temporary/badlee/part time workmen without specifying any period of employment for consideration of such absorption. Hence the action of the tribunal in limiting the eligibility only to those who had worked between 1-1-82 and 20-5-85 is violative of the provisions of Section 10(4) of I.D. Act and renders the award void and inoperative in law.

48. The corporation in support of its contention aforesaid has relied on the case of the Management Rambagh Palace Hotel Vs. The State of Rajasthan, 2000(86) FLR 134—140. It is held as follows:—

"It is settled law that the industrial tribunal can only adjudicate the reference made to it by the government and can not substitute its own reference in terms of reference or even can not go beyond terms of the reference. It is function of the industrial tribunal to answer the reference as is referred to and once the reference has been made on the demand made by the workers/union it is incumbent on the labour court or industrial tribunal to decide the same."

49. Second limb of the argument in this respect of the corporation is that the aforesaid dated of 1-1-82 to 20-5-85 was stipulated with the consent of the parties which is also an illegal action of the tribunal. It is well accepted principle of law that neither acquiescence nor consent of the parties can confirm jurisdiction on an industrial tribunal. In support of this proposition the corporation has relied on the case of A. Khader Mohideen Brothers (Express Beedi Factory) Vs. Its Workers, 1960 II-LJ 669—673. It is held that :

"The jurisdiction being by virtue of the State and limited by the terms of the reference under Section it would not be open to the workers and the management to confer jurisdiction upon the tribunal on a question not covered by the reference."

50. It is next submitted by the Corporation that the present reference order does not speak about extending the benefit of both the said award of Honourable Mr. Justice R. K. Tulpule and Honourable Mr. Justice M. S. Jandar to those workmen employed after 20-5-85. It only speaks whether the action of the management in not absorbing such workmen who were appointed after 20-5-85 is justified. Thus reference order requires that dispute be adjudicated on its own terms and without reference to both the aforesaid award.

51. Again the corporation has submitted in this respect that the award of Mr. Justice Tulpule has abdicated its jurisdiction by not indicating the criteria for determining the suitability and desirability of the workmen eligible for absorption and leaving it to the screening committee. The order of reference sent to Mr. Justice R. D. Tulpule required it to decide the conditions of absorptions of the temporary/badlee, part time workmen and not to lay down the rule of absorption. Hence in view of the terms of reference it was necessary for the tribunal to have decided the conditions of absorption and to lay down specific guidelines of screening committee and not to leave it in the committee itself. It is left incomplete and unresolved and thus the award can not be considered as an award at all.

52. In the like manner corporation has challenged the legality of award of Hon'ble Mr. Justice M. S. Jandar. It is contended that in the writ petition No. 801 of 1986 filed before the Hon'ble High Court of Bombay by the corporation against the award given by Hon'ble Mr. Justice Tulpule and Hon'ble High Court vide order dated 14-8-86 though had dismissed the writ petition but made certain observations regarding the findings on the point of absorption recorded in the award and thereafter in order to implement the award of Mr. Justice R. D. Tulpule the steps were taken by the corporation and thus according to the corporation the award of Mr. Justice R. K. Tulpule had merged in the said order of Hon'ble High Court of Bombay and the reference under Section 36-A of the Act sent to National Tribunal presided over by Mr. Justice Jandar for clarification of the award of Mr. Justice Tulpule was not improper. In the award given by Hon'ble Mr. Justice M. S. Jandar while discussing over the plea of the corporation regarding the applicability of the theory of merger of the award of Mr. Justice R. D. Tulpule. In the order of the Hon'ble High Court of Bombay the Ld. Tribunal has recorded its finding that the theory of merger was foreign to the scheme of the I.D. Act and the submissions of the corporation were not sustainable is totally erroneous and contrary to the principles enunciated by the Hon'ble Supreme Court in the case of S. S. Rathore Vs. State of M.P. AIR 1990 S.C. 10 to 17. It is held that :

"A distinction adopted in Mohammed Neohs case (AIR 1958 SC 86) between a Court and a Tribunal being the Appellate or Division Authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by Tribunals and other constituted authorities. In fact in respect of many disputes the jurisdiction of the court is now barred and there is vesting of jurisdiction in Tribunals and authorities. That being the position we see no justification for the distinctions between the courts and tribunals in regard to the principle of merger".

53. The corporation has vehemently argued that the award given by Mr. Justice R. D. Tulpule had merged in the said order of Hon'ble High Court of

Bombay and hence Mr. Justice M. S. Jandar had no jurisdiction to interpret the award of Mr. Justice R. D. Tulpule under section 36-A of the I.D. Act and the interpretation of the award of Mr. Justice R. D. Tulpule given by Mr. Justice Jandar ignoring the direction of Hon'ble High Court of Bombay will necessarily follow that the award of Mr. Justice M. S. Jandar has no binding effect. It is next submitted in this regard that Mr. Justice Jandar had no jurisdiction to record any finding on the unfair labour practice by the corporation but the tribunal took this issue of unfair labour practice by the corporation in consideration and recorded finding in para 62 of the award and in this way Mr. Justice Jandar had exceeded jurisdiction in the award given by Mr. Justice R. D. Tulpule. No finding regarding the unfair labour practice by the Corporation was anywhere recorded. Again Mr. Justice Jandar had no jurisdiction to pass interim order dated 29-6-87 directing for the maintenance of the status quo and the order so passed amounts to wrong assumption of jurisdiction by Mr. Justice Jandar.

54. In view of the fact the corporation has submitted that the award by Mr. Justice M. S. Jandar was given in exercise of existing jurisdiction and was not binding on the corporation.

55. In this continuance next arguments of the corporation is that after the acceptance of the terms of compromise/settlement arrived at between 8 out of 9 unions representing 99% of workmen and the corporation by the Hon'ble Supreme Court of India vide order dated 1-3-89 passed in SLP No. 14906 of 1988 both these awards of Mr. Justice R. D. Tulpule and Mr. Justice Jandar were substituted with the terms of the compromise. So arrived at and it was also agreed by both the parties accordingly. The legal effect of such substitution of both the awards by the terms of the compromise is that both the awards do not exist thereafter. It is also contended that in the aforesaid circumstances since the workmen were willing parties to terms of the compromise now they cannot place reliance on the aforesaid two awards of Mr. Justice Tulpule and Jandar in the present case.

56. It has again been contended by the corporation that the present reference also does not speak about extending the benefit of both the aforesaid awards to temporary badlee, part time workmen appointed after 20-5-85. The corporation has thus argued that in view of the aforesaid circumstances the present reference should be decided without the help of the aforesaid both the awards of Mr. Justice Tulpule and Jandar. It is next contended by the corporation that the scheme regarding absorption of badlee, temporary and part time workers engaged after 20-5-85 submitted and approved by the Hon'ble Supreme Court of India vide order dated 23-10-92 passed in SLP(C) No. 10393-10413/92 E. Prabhawati and others Vs. LIC and others shall be binding on the workman and their case of absorption can be considered in accordance with the said scheme.

57. In this respect it is submitted by the corporation that the SLP (Civil) No. 14906 of 1988 was filed by the corporation before the Hon'ble Supreme Court against the authorities of Mr. Justice R. D.

Tulpule and M. S. Jandar, The Hon'ble Supreme Court was pleased to grant special leave on 1-3-89 in the light of the terms and conditions of the compromise entered into between the unions representing 99% of the workmen and the corporation. Again special leave petition filed before the Hon'ble Supreme Court in the said SLF on behalf of the worker seeking some relief of absorption as given to workmen from 1-1-82 to 20-5-85 in the award of Mr. Justice Tulpule. The Hon'ble Supreme Court at the time of admission of this application on 6-10-92 had directed the corporation to frame for Regulation of the employees who were granted adhoc appointment for 85 days at intervals from time to time. Contention is that the aforesaid special leave petition was filed by workmen on which order dated 6-10-92 aforesaid was passed by the Hon'ble Supreme Court and it makes it abundantly clear that corporation was authorised to frame scheme of absorption of ad-hoc temporary employees and subsequently corporation had submitted scheme of absorption before the Hon'ble Supreme Court on 23-10-82 which was accepted by Hon'ble Supreme Court and is thus binding on this Tribunal also under Article 141 of the Constitution of India. Fact that Hon'ble Supreme Court had directed the corporation to evolve a scheme for regularisation of the service of ad-hoc employees in accordance with the guidelines contained in Piara Singh's case and then accepting it on 23-10-92 being in consonance with the principles laid down in Piara Singh's case and the workman had consciously approached Hon'ble Supreme Court clearly shows that the workmen are bound by the said scheme. It is submitted by the corporation that order dated 23-10-92 of the Hon'ble Supreme Court was given for setting the law relating to the regularisation of the Adhoc employees engaged after 20-5-85 and as such being law of the land is binding on this tribunal too. It is again submitted that in view of the said fact that scheme of corporaion was accepted by the Hon'ble Supreme Court as reasonable. It is to be held that their workmen are entitled to be continued in service on the same terms and conditions until the regularly selected candidates is appointed. The workman according to the corporation have to undergo the selection process of written test and interview, and their selection will depend upon the over all performance in the written test and the interview.

58. It is thus further submitted that recruitment in accordance with the statutory instructions issued by the Chairman known as L.I.C. of India Recruitment (of Class III and IV Staff) Instructions 1993 is the normal instance of the working of the corporation and appointment of a temporary staff should be made in accordance with the instructions. The instructions issued by the Chairman of the Corporation has a statutory force and it will have retrospective effect and in view of this also the workmen are not entitled to take any benefit of the award of Mr. Justice R. D. Tulpule and Mr. Justice Jandar. Lastly it is submitted that the workmen were appointed for a short spell due to exigencies of the work and under the circumstances enumerated in para 9 to 14 of the written statement they cannot claim regularisation in the permanent cadre.

59. On behalf of the workmen at the first stage the whole of the contention of the corporation about the inapplicability of the award of Hon'ble Mr. Justice R. D. Tulpule as well as the award of Hon'ble Mr. Justice Jandar has vehemently been denied. It is submitted that it would be wrong to say that in view of the compromise entered into between the corporation and the majority of the workmen both these awards have lost its efficacy and are not in existence. The award of Mr. Justice R. D. Tulpule has been given in a legal manner and has imposed a continuous obligation on the corporation for the absorptions of the temporary/badlee/part time employees even after passing the award. the award will have a binding effect on the parties in view of section 18(c)(d) of the Act and it will also continue to operate until it is terminated in accordance with law. The award will continue to operate even after the expiry of the stipulated period given in a second proviso of sub-section 3 of Section 19 of the Act & it will cease to operate only after in the circumstances enumerated in sub clauses (6) & (7) of the said section 19 of the act. In other words the award can cease to be effective after giving notice by any of the parties of the award and after the expiry of two months time from the date of the notice. On the present case according to the workmen no such notice has ever been given by either parties and hence it will totally be unjustified to say that the aforesaid award stands terminated.

60. It is further submitted in this respect on behalf of the workmen that it is wrong to say that these awards were repudiated by the terms of the compromise aforesaid. The said compromise according to the workmen since being entered into between the corporation and the employees then existing and thus it will not include the cases of the present employees, more over the compromise aforesaid as submitted on behalf of the workmen being opposed to public policy is violative of section 23 of the contract act and such compromise will have no binding effect. The award aforesaid imposes a legal obligation and thus it can not be taken away by the corporation. Again the argument of the workmen is that both these awards have not been set aside either by any of the Hon'ble High Courts of India or by the Hon'ble Supreme Court of India the awards should be held to be in continuous operation.

61. It is further submitted that the terms of the compromise nowhere provides about the termination of the award and in view of this also is incorrect to say that both the aforesaid awards have lost its existence. Again the memo of the compromise does not show any such stipulation that the right of the parties created by the said award has been taken away and on this ground too according to the workmen the corporation will not be permitted to assert about the ineffectiveness of the award aforesaid.

62. It is also argued in this respect that the corporation has once accepted the terms of the award and got it implimented by issuing various circulars the corporation on the ground of principles of estoppel is stopped to allege that by virtue of the compromise aforesaid the awards have become nullified.

63. Again it is submitted that vide order dated 1-3-89 the Hon'ble Supreme Court of India has

simply directed for the implementation of the terms of compromise during the pendency of the appeal and thus on this ground too the compromise will not be considered as a binding effect on the present employees.

64. Next workmen have also denied the management contentions about the finality and the permanent effect of the order of Hon'ble Supreme Court passed on 23-10-92 accepting and confirming the scheme of regularisation of the temporary employees of the workmen and it is asserted that the said order of the Hon'ble Supreme Court cannot be considered to have been passed under article 141 of the Constitution of India and it is not binding on the present workmen. Likewise workmen have also denied the corporation allegations that the temporary employment rules being issued in the shape of Life Insurance Corporation of India (Employment of Temporary Staff) instructions 1993 will have binding effect for the absorption of the workmen in the regular service of the corporation.

65. As against the applicability and binding nature of the said instructions 1993 it is submitted on behalf of the workmen that it will have no binding force because of the fact on the date of the reference the said instructions 1993 was not in existence nor the said instructions of 1993 was ever produced before this tribunal in the case and thus no cognizance of it can be taken it. The said instructions of 1993 has also not been either approved or accepted by Hon'ble Supreme Court. The contention of the corporation that the said instruction of 1993 should be deemed to have been approved by Hon'ble Supreme Court is according to workmen totally misconceived and incorrect. It is in the order of the Hon'ble Supreme Court that Mr. Salve learned counsel for the corporation had submitted that in regard to future adhoc appointment/regularisation the corporation is in the process of making a scheme. Thus under the circumstances it is only the aforesaid both the awards giving specifically the formula of absorption of temporary/badlee/part-time employees becomes final and binding on the parties and corporation has no right to change or modify the binding award. Again according to the workmen in the said awards there is no direction that formula for absorption given these shall not apply to similarly placed and employed persons after 20-5-85.

66. It is next submitted on behalf of the workmen that the terms of the present reference itself shows that corporation has deviated from the practice and has failed to fulfil its obligation to absorb/badlee/temporary/part-time workmen engaged after 20-5-85. On as of proving this departure from an established practice based on judicial pronouncement of the N.I.T. of Mr. Justice Tulpule and being upheld by Hon'ble Supreme Court is in any manner justified **SQUARLY LIES ON THE CORPORATION.** Method and criteria of absorption have already been determined by the NIT of Bombay of Mr. Justice R.D. Tulpule in his award and modified and upheld by the Hon'ble Supreme Court. Hence the scope of the present reference is restricted to the action of the corporation in not absorbing these workmen.

67. Next the workmen while denying the corporation's contentions about the incompetency of the present reference on the basis of the binding effect of the rule 8(2) of the Regulation the workmen have strongly submitted that the regulation the workmen have strongly submitted that the regulation has no effect in the case and the corporation cannot take any benefit of it. The regulation only refer to temporary appointment in certain conditions and not at all deals with such cases of temporary/badlee/part-time year after year and continuously. In this continuation the workmen have also denied that the regulation will have overriding effect on the Act and will operate as a bar for raising of an industrial dispute under the Act. The Act according to the workmen is a special act dealing with specific problem which in the present case relates to the absorption of badlee/temporary/part-time workmen of corporation employed after 20-5-85 and in a view of the peculiar fact that there is no rules existing which has been validly framed or is in force. The dispute of absorption of the temporary/badlee/part-time workmen of the corporation employed after 20-5-85 can well be adjudicated upon on the present reference. The present reference thus according to the workmen is legal and well.

68. It is further argued on behalf of the workmen that the corporation has been engaging large number of employees in the said categories through various contractors and other agencies. But these employees are unreasonably treated by the corporation as outsiders and not its employees. For all purposes these employee shall be treated as employees of corporation and should be given all the benefits like its other employees doing similar job.

69. Workmen have further submitted that the corporation is indulging in the unfair labour practice and also following the practice of hire and fire by engaging persons as temporary/badlee/part-time and removing them from service before they could complete particular period of time with a view that they should not claim the right of regularisation in the service. The corporation after removing such employees use to employ other persons their place again these types of workmen after their engagement were continued in service for indefinite period by giving them artificial breaks. The corporation further allowed to these workmen to continue in service not in their actual name after sometime but to work in fictitious names. It is also submitted on behalf of the workmen that despite the fact that the vacancies permanent in nature in their job existed but the workmen were continued to work as temporary/badlee/part-time and were not absorb up in regular service.

70. In reply to the workmen's contention about the unfair labour practice being committed by the Corporation is denied by the Corporation. The Corporation has asserted that the large number of such workmen were employed on the direction of the tribunals and courts and thus were allowed to continue in service for which the corporation had nothing to do and thus if such workmen were allowed to continue as temporary/badlee/part-time the corporation cannot be charged for practicing any unfair practice. In this respect it is again submitted by the

corporation that instances are also there when these workmen were allowed to continue in their job for a long period on the pressure exerted by their unions on the corporation. It is thus strongly contended by the corporation that it would be basically incorrect and totally wrong that the Corporation had indulged in any unfair labour practice.

After having considered the submissions and contentions aforesaid made by both the parties and the relevant facts and circumstances of the case at the very beginning I find it true that as per terms of the present reference the scope and ambit for the adjudication of the dispute is limited only to the extent of the justifiability of the action of the corporation for not absorbing the temporary/badlee/part-time workmen employed after 20-5-85 in the corporation. It is also true that for the adjudication of the dispute of the present case this tribunal is not required to lay down any new conditions of service for absorptions of these workmen but to decide a dispute on the existing facts and circumstances of the case.

71. In my view it is undisputedly true that recruitment and absorption can not be equated together. In the award of Hon'ble Mr. Justice Jamdar it has finally been held that absorption could not mean recruitment. Hence the rule and procedure applicable to the recruitment will not be applicable in the case of absorption. Absorption in my view presupposes a valid appointment in the service and its continuity in it. The absorption of the workmen in the service I find has to be done on the basis of the recognised principles and the rules and regulations validity framed.

72. In the present case as seen above earlier an award by NIT presided over by Hon'ble Mr. Justice R. D. Tulpule, laying down the condition of absorption of temporary/badlee/part-time workmen of the corporation has already been given. The said award has not been reversed or set aside by any of the Hon'ble High Court or by Hon'ble Supreme Court of India. It is not even terminated as yet. In view of the fact I find myself unable to agree with the whole of the contention of the corporation regarding the inapplicability of the award in this proceedings. In my view it will not be correct to say that by recording finding about cut off date i.e. 1-1-82 to 20-5-85 the Tribunal has exceeded jurisdiction in any manner. It was simply an incidental matter and was necessary for the determination of main dispute referred to the tribunal. The award in my view can not be held as invalid and inapplicable in the case. The submissions made on behalf of the workmen in this respect I find has substantial force. Certainly award even after the expiry of stipulated period given in 2nd proviso of section 19(3) of the Act can be terminated only after expiry of period of two months of the notice given by either party as provided under section 19(6) of the Act.

73. I also do not agree with the submission of the corporation that the said award was substituted by the term of compromise entered into between corporation and the then workmen of temporary/badlee/part-time workmen before Hon'ble Supreme Court in SLP No. 14906 of 1988. The contention of the workmen

that there can be no substitution in award is well acceptable to me. The theory of merger of Award of Hon'ble Mr. Justice R. D. Tulpule in the order of Hon'ble High Court of Bombay as placed by the corporation I find has got no force. This point has vividly been dealt with in the award of the Hon'ble Mr. Justice M. S. Jamdar. The finding so recorded has no where been recalled to set aside. It has become final. This tribunal has thus no jurisdiction to record any finding again on the same issue. This contention of corporation is rejected.

74. Likewise the award of Hon'ble Mr. Justice can held as applicable in this proceeding on the same reasoning as found in respect of the applicability of an award of Hon'ble Mr. Justice Tulpule.

75. Now as regards the binding effect of the order dated 23-10-92 passed by Hon'ble Supreme Court of India in SLP No. 10393-10413/92 E. Prabhawathy and others Vs. Life Insurance Corporation of India and another confirming the scheme of absorption/regularisation as argued on behalf of the corporation in my view can be well accepted. The order passed I find is between the same parties. E. Prabhawathy and other is the party in this proceeding being impleaded at the subsequent stage of the proceeding. Statement of claim has been filed in the present case by the aforesaid workmen. The said order dated 23-10-92 of Hon'ble Supreme Court is thus between same parties of the case and in view of the circumstances I find that workmen has no ground to challenge the legality of the said order dated 23-10-92. The conditions of the workmen made in this regard are not accepted.

76. Instruction 1993 providing temporary employment rules with respect to the absorption of temporary/badlee/part-time workmen I find is not applicable in the present case. I agree with the contention of the workmen that since on the date of reference was not in existence hence its cognizance can not be taken by this tribunal. Further the instruction 1993 was not even produced in this case nor it was approved by Hon'ble Supreme Court. The learned counsel for the corporation and simply given information for framing scheme in regard to future adhoc appointment and regulation. The contention of the corporation that it would be deemed to have been approved as subsequent even by Hon'ble Supreme Court in my view is fallacious and not acceptable.

77. Moreover the Instruction 1993 in my view has been framed without any authority. Earlier the authority of framing the terms and conditions of service in view of the provisions provided in section 49(bb) of LIC Act, 1956 was vested with the corporation. But later on by amendment Act, No. 1 of 1981 Section 49(bb) was deleted and this authority of framing terms and conditions of service was vested with the Central Government vide section 48(2)(cc) of LIC Act, 1956 newly inserted after amendment.

78. Argument of the corporation is that Regulation by the corporation was locally framed. Under its rule 4 power for the implementation of Regulation was given to the Chairman. The instruction 1993 has been issued by the Chairman under rule 4 of the Regulation. Hence in view of the newly inserted sub-section 2-A of Section 48 of LIC Act, 1956 the

Instruction 1993 can be held valid. It is not acceptable to me. Sub Section 2-A of Section 48 of LIC Act 1956 is reproduced below :—

“(2-A) The Regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981 with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on appointed day under this Act, shall be deemed to be rules made under Cl. (cc) of sub-section (2) and shall, subject to the other provisions of this section, have effect accordingly.”

79. From the above it is abundantly clear that the provisions with respect to term and conditions of service which existed and was in force on the date of the commencement of the Amendment Act 1981 were only served and not that provision which was framed subsequently to the Amendment Act, 1981, even by the authority being competent under the Regulation. Admittedly Instruction 1993 was not in existence at the time of the commencement of the amendment Act 1981. The Corporation I find cannot take any benefit of the provisions of Instruction 1993. I find and hold that instruction 1993 is not applicable in the case.

80. Now coming to the question of the incompetency of the reference and non jurisdiction of the tribunal for the adjudication of the dispute as raised by the corporation after having considered the existing facts and circumstances of the case I do not feel impressed by the arguments of the Corporation, in this respect. In my view it is totally incorrect to say that prohibition of claiming absorption or the preference for recruitment as provided under rule 8(2) of the Regulation will apply to all the present workmen. The rule is silent about the badli/part-time workmen. The Temporary employees mentioned therein I find are those temporary employees who are employed on a short term basis due to exigencies of the work and in the stop gap arrangement without following the rules. In Rule 8(1) of the Regulation the word “Temporary Basis” as used in my view clearly shows that the workmen employed as temporary/badli/part-time after following the procedure and were allowed to continue in their service for a long time i.e. beyond the qualified period of their service are excluded. The contentions made in this respect on behalf of the corporation is not accepted.

81. The next contention of the corporation with respect to the overriding effect of regulation on the Act and also its contention of non jurisdiction of this Tribunal I find has no force. Full Bench of Hon'ble High Court of Madras in the case between Terminated full Time, Temporary LIC employees Welfare Association and Senior Divisional Manager, L.I.C., Thanjavur 1993 (1) 11J 1030 has held that the provisions of the Industrial Dispute Act will be applicable only in the matters covered by Section 48(2c) of the LIC Act. It has already been found above that no valid rules or regulations regarding the condition of service of the workmen of corporation

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under Section 48(2)(cc) of LIC Act, 1956 as amended by the Act 1 of 1981 exist. Thus I find that the present reference under the Act is valid and legal and this tribunal has jurisdiction to adjudicate the dispute referred to under section 10(1)(d) and (2A) of the Act.

82. As regards the workmen contention of the unfair labour practice being adopted by the corporation after having considered the entire facts and circumstances of the case I do not find it satisfactory. It is the definite case of the corporation that the workmen employed as temporary/badli/part-time continued in their service due to the fact that they were employed on the directions of the tribunals and other courts and were continued in service on the basis of the restraint orders and also to the fact that these workmen were continued in service on the pressure of their unions. This has well been alleged by the corporation and it has not been refuted from the side of the workmen.

83. This apart I find that this tribunal is incompetent to record any finding in this respect because the term of reference does not mention about it. This aspect of the case cannot be taken into consideration being an incidental matter. In view of this also I find myself enable to accept the contention of the workmen with respect to the unfair labour practice of the corporation.

84. Now coming to the main dispute regarding the absorptions of these temporary/badli/part time workmen of the Corporation as stated by the corporation it is no denying the fact that these categories of workmen were employed for a short term on the exigencies of the work without following the procedure. The witnesses examined on behalf of the workmen Shri Saibal Chowdhary WW7, Shri A. S. Dev WW9, Shri S. S. Jain WW29 and Shri P. V. Kulkarni WW26 have all admitted that temporary appointments were made against leave vacancies and for occasional work and also pending regular recruitment.

85. In view of this I agree with the contention of the corporation that such workmen who were employed on a short term basis and did not complete the qualified period of service for their absorption as laid down in the award of Mr. Justice R. D. Tulpule and confirmed by the award of Hon'ble Mr. Justice M. S. Jandar are neither eligible nor comply the necessary requirements of absorption and thus the absorption of such workmen in the regular service is beyond question. However it is not the full story. It has strongly been asserted on behalf of the workmen that these workmen were employed in the corporation in class three and four service after following the procedure and through the employment exchange and they were continued in their job of permanent and of perinial in nature for long time beyond the qualifying period of their eligibility for absorption but they were not absorbed accordingly and even their services were terminated. This has well been asserted in the statement of claim filed by E. Prabhavati and others as well as in the statement of claim of Tamil

Nadu Terminated full time L.I.C. Employees Association. Workmen have also stated in evidence Sri Ram Bharose Pd. WW16 as stated in his affidavit he had put in work in the following manner :

- (II) 1985—151 days
 1986—291 days
 1987—182 days
 1988—190 days
 1989—184 days
 1990—193 days
 1991—134 days
 1992—244 days
 1993—224 days
 1994—162 days upto the month of June.

Shri Ravinder Kumar WW14 working as watchman has stated that he was appointed after interview according to term in para 8 of his affidavit it is stated that he has been working as temp since 1986 but not regularised as yet. His affidavit was given in 1996. Pandurang Kulkarni WW 26 has stated in para 2 of his affidavit 195 temporary/badli/part time workmen working as watchmen, liftmen, sweeper in Ahmedabad and were appointed on 20-5-85. Some of them were sponsored by Employment Exchange of Government of Gujarat. Majority of such employees were employed in permanent vacancies arising out of retirement promotion transfers and death. Permanent vacancies arose due to increase of business of LIC.

86. These workmen have not been effectively cross-examined by corporation. Their evidence can well be accepted. It has not been specifically denied by the corporation. Corporation has not even filed its written statement against the statement of claim of Tamil Nadu Terminated Full Time Temporary LIC Employees Association. Under the circumstances in my view a vested right of absorption has accrued to them.

87. In the service jurisprudence it is an established principle that ad-hoc or temporary employees employed in service after following the procedure and were allowed to continue in their job for longer period should be regularised in their service.

88. In view of the fact I am of definite view that such type of workmen belonging to temporary/badli/part time categories in class III and class IV service of the corporation who were employed after following the procedure and were allowed to continue service beyond the qualifying period and were eligible and suitable in every respect should be given absorption in these service from date of the vacancy in the service in which they could have been absorbed. It will also apply to those such employees whose services were terminated by the corporation.

89. As regards the case of the workmen employed on a contractual basis in the corporation in my view they could claim their absorption in the service on fulfilling the aforesaid requirements in case their exist direct relationship of master and servant between them and the corporation. The benefit of absorption in service will not be available to those contracted employees where no relationship of master and servant existed between them and the corporation and also that they were not possessing the requisite requirements of the eligibility and suitability for the absorption.

90. Now coming to the point of the absorptions of these workmen I find that the basis for the absorption should be as laid down in the award of Hon'ble Mr. Justice R. D. Tulpule and also of the award of Hon'ble Mr. Justice M. S. Jandar.

91. While dealing with the point of eligibility for absorption of such workmen Hon'ble Mr. Justice R. D. Tulpule in para 54 of the award has clearly found that the workmen belonging to class four service who have putting work for a total period of 70 days during a period of three calendar years they should be considered as eligible for being absorbed. Likewise the workmen belonging to class III service who has worked for 85 days in a period of two calendar years would be eligible for absorption. It is also specifically found that the workmen putting their working days less than 70 days during a period of three calendar years in the case of class IV employees and less than 85 days in the case of class III Employees, a period of two calendar years will not be eligible for their absorption in any manner.

92. It is also found that the absorption of such workmen should be considered on their suitability. In this regard specific guidelines have been given in the award. Hon'ble Mr. Justice M. S. Jandar while interpreting and confirming the award of Hon'ble Mr. Justice Tulpule has also made his observations regarding the eligibility and suitability for the absorption of such workmen.

93. It is observed by him that while counting the working days of the employees for their eligibility for absorption in regular cadre the working days will not only include those days on which the workmen had actually worked, but it will also include the days on which he is deemed to have worked. The workmen should be deemed to have worked on all days on which he was required to take extraordinary leave in lieu of casual leaves or earn leaves. Age of the workman at the time of his first employment should be taken into consideration and not at the time of considering him for absorption. If the workman is found to be over age at the time of absorption and he is satisfying all the requirement of his eligibility for absorption he should not been denied the benefit of absorption on this ground of becoming overage. Question of desirability and suitability should be considered on the basis of the past record of service of particular workman. If no such record is maintained which is expected to be maintained corporation cannot take advantage of its own omission in not maintaining the relevant record. Possessing of normal qualification of eligibility presented by the recruitment rule will not be necessary. It is only necessary at a time of initial appointment of the workman by the corporation.

94. In view of the matter I find and conclude that the action of corporation denying the absorption of these temporary/badli/part time workmen as dealt with above in the body of this award and employed after 20-5-85 is not justified. I further find that these workmen employed after 20-5-85 should be given absorption in their job on the same terms and conditions as laid down in the aforesaid two awards namely, the Hon'ble Mr. Justice R. D. Tulpule and of Hon'ble Mr. Justice M. S. Jandar in respect of

the workmen employed with effect from 1-1-82 to 20-5-85 and dealt with by me as above. It is directed that the corporation shall take into consideration for the absorption of the workmen on their eligibility and suitability as dealt with above in the award. The case of those workmen belonging to the category of temporary, badli, part-time who had become eligible for their absorption in their job after completing the qualified period of working and were suitable in every respect but their services were terminated and they were turned out of the job by the corporation should also be considered for the absorption of such terminated workmen of the corporation shall publish a notice in the daily newspaper having wide circulation throughout India and if in compliance of the notice the workman concerned consent in writing within stipulated period which could be given in the said notice the case of such workman should also be considered for their absorption in the regular vacancy then existing. At the time of the consideration of absorption of such workmen if it is found that no regular vacancy is available to such workmen. Supernumery posts should also be created and such workmen should be given absorption in it. It is again directed that the cases of these workmen for absorption in existing vacancies should be taken for consideration first irrespective of the regular recruitment if taken. The case of the contractual workmen for absorption shall be taken into consideration as per observation made in the body of the award and on the basis and on conditions as stated above.

95. The term of reference is answered accordingly and the award is given in the like manner.

Dated : June 18, 2001.

K. S. SRIVASTAV, Presiding Officer

नई दिल्ली, 13 जुलाई, 2001

का. आ. 1825.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (b) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिलेखना संख्या का. आ. 202 दिनांक 16-1-2001 द्वारा खनिज तेल (कच्चा तेल), मोटर और विमानन स्प्रिट, डीजल तेल मिट्टी का तेल ईंधन तेल, विविध हाइड्रोजन तेल और उनके मिश्रण, जिनमें सिन्थेटिक ईंधन, स्नेहक तेल और इसी प्रकार के तेल शामिल हैं। को उक्त अधिनियम के प्रयोजनों के लिए 16-1-2001 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (b) के उपखंड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के

लिए 16-7-2001 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[का. सं. एस-11017/6/97-आई. आर. (पा. एल.)]
एच. सी. गुप्ता, अवर सचिव

New Delhi, the 13th July, 2001

S.O. 1825.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 202 dated 16-1-2001 the services in the Industry engaged in the manufacture of production of Mineral Oil (Crude Oil), Motor and Aviation, Spirit, Diesel Oil, Kerosene Oil, Fuel Oil, Diverse Hydrogen Oils and their blends including Synthetic fuels, lubricating oils and the like which is covered by item 26 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), to be a public utility service for the purpose of the said Act, for a period of six month's from the 16-1-2001.

And whereas the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 16-7-2001.

[No. S-11017/6/97-IR(PL)]

H. C. GUPTA, Under Secy.

नई दिल्ली, 28 जून, 2001

का. आ. 1826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-6-2001 को प्राप्त हुआ था ।

[सं. एल-12011/55/98-आई आर (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 28th June, 2001

S.O. 1826.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 27-6-2001.

[No. L-12011/55/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SHRI R. P. PANDEY, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SARVODAYA NAGAR,
KANPUR

Industrial Dispute No. 80/99

In the matter of dispute :

BETWEEN

The Dy. General Secretary,
PNB Employees Union,
2 West Arjun Nagar,
Opp. Temple,
Agra.

AND

The Regional Manager,
Punjab National Bank,
Regional Office,
Vaibhav Nagar,
Agra.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-12011/55/98-IR(B-II) dated 19-4-99 has referred the following dispute for adjudication to this tribunal—

"Whether the action of the Regional Manager Office PNB Agra is in accordance to circular No. 1569 dated 16-2-97 and whether the above circular is defective one as alleged by the union? If not what benefits the workmen are entitled to?"

2. In the instant case after exchange of pleadings between the parties, the union raising the dispute stopped coming to attend the proceedings of the case. However, the case was fixed for filing of rejoinder by the union, but neither the union nor any one on its behalf appeared in the case nor filed rejoinder statement. The union also did not adduce any evidence nor filed any documentary evidence in the case in support of its statement of claim. Needless to mention that on 12-1-2001 the proceedings of the case were adjourned to 26-2-2001 on the application moved by the union, but thereafter none appeared in the case on behalf of the Union.

3. Therefore, from the above discussions of the case, I am inclined to believe that neither the union nor its representative is interested in contesting the case. In view of it the tribunal is left with no other option but to hold that the claim of the union for the concerned workmen is liable to be dismissed for want of evidence and proof.

4. Accordingly it is held that workmen are not entitled for any relief pursuant to the present reference and the reference is decided against the workmen in respect of whom the present dispute has been raised by the Union.

R. P. PANDEY, Presiding Officer

मई दिल्ली, 28 जून, 2001

का. भा. 1827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबन्धन के संबंध

विवादों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अस न्यायालय-II, मुम्बई के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-6-2001 को प्राप्त हुआ था।

[सं. एल-12011/224/2000-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 28th June, 2001

S.O. 1827.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court-II, Mumbai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 27-6-2001.

[No. L-12011/224/2000-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/14 of 2001

Employers in relation to the management of
BANK OF BARODA

The Assistant General Manager,
Bank of Baroda,
18th Floor,
Stock Exchange Building,
Dalal Street,
Mumbai-400014.

AND

Their Workmen.

The Joint Secretary,
Bank of Baroda Emp. Trade Union Congress,
Flat No.3,
79-Hindu Colony,
Dadar,
Mumbai-400014.

APPEARANCES :

For the Employer : Mr. L. L. D'Souza and
Mr. Liaz Mohd. Representatives.

For the Workmen : No Appearance.

Mumbai, dated 12th June, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12011/224/2000-IR(B-II), dated 12/16-01-2001, have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-Section (1) and Sub-section (2A) of Section 10, of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bank of Baroda by dismissing Shri Harish Sallan from the services of the bank is justified and proper? If not, then what relief the workman is entitled to?"

2. On receipt of the reference from the Ministry, Tribunal issued notices to the union and the management. However, union though served (vide Exhibit-4) none appeared on its behalf. On behalf of the management Mr. L. L. D'Souza representative appeared (vide Exhibit-5). Matter was fixed for filing of Statement of Claim by the Union, on 8-3-2001, 28-3-2001, 20-4-2001, 11-5-2001, 1-6-2001 and today i.e.

12-6-2001. However, till today none appeared on behalf of the union nor put Statement of Claim, which indicates that union is not interested in prosecuting the reference. Consequently it deserves to be disposed of and hence the order :—

ORDER

Reference stands disposed of for non-prosecution.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 29 जून, 2001

का. भा. 1828.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-2001 को प्राप्त हुआ था।

[सं. एल-12011/195/2000-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 29th June, 2001

S.O. 1828.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 29-6-2001.

[No. L-12011/195/2000-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Presiding Officer : Rudresh Kumar.

ADJUDICATION

I.D. No. 173/2000

Ref. No. L-12011/195/2000-IR(B-II)

Dated 18-10-2000

The Asstt. General Secretary,
Central Bank Staff Association,
13/11, Shiv Nagar Colony Allahapur,
Allahabad (U.P.)
(espousing cause of Moti Lal Yadav)

AND

The Regional Manager,
Central Bank of India,
Zonal Office,
Lanka,
Varanasi.

AWARD

By reference No. L-12011/195/2000-IR(B-II) dated 18-10-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 I.D. Act, 1947 (14 of 1947) made over this industrial dispute between Asstt. General Secretary, Central Bank Staff Association, Allahabad espousing cause of Moti Lal Yadav and the Regional Manager, Central Bank of India, Varanasi for adjudication.

The reference is produced as under :

"Whether the action of the management of Central Bank of India in not promoting to Shri Moti Lal Yadav is justified? If not, what relief the workman is entitled for?"

2. Despite repeated notices, the workman did not respond. Registered notices were sent on 22-11-2000, 21-12-2000, 15-1-2001, 9-2-2001, 26-3-2001, 30-4-2001 and 17-5-2001. In response to the notice from this Tribunal, the management appeared through S. K. Gupta on 17-5-2001 and 22-6-2001. There is presumption of service of registered notices. There seems no justification for the workman to remain absent despite notices and file claim statement. As the claim statement has not been filed so far, it is not possible to adjudicate the case on merit.

3. The reference order is also vague. It does not specify post on which promotion is sought. Even the relevant date has not been given.

4. In the said circumstances the reference is returned unadjudicated on merit.

RUDRESH KUMAR, Presiding Officer

Lucknow :

25-6-2001.

नई दिल्ली, 2 जुलाई, 2001

का. भा. 1829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 24) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बंगलोर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-06-2001 को प्राप्त हुआ था।

[सं. एल-12012/77/91-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 2nd July, 2001

S.O. 1829.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 29-6-2001.

[No. L-12012/77/91-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 4th June, 2001

PRESENT :

Hon'ble V. N. Kulkarni, Presiding Officer.

C.R. No. 43/91

I Party

K. M. Satyanarayana,
C/o Smt. K. M. Shantha,

No. 1, Maruthi Nilaya,
11th 'A' Cross, S. P. Extension,
BANGALORE-560 003.

II Party

The General Manager,
Canara Bank Staff Section,
Bangalore Circle Office,
25, MG Road, P.B. No. 5147
BANGALORE-560 001.

APPEARANCES :

I Party : Dr. S. Armugham, Advocate,

II Party : Pradeep S. Sawkar, Advocate.

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/77/91-IR(B-II) dated 25-6-1991 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Canara Bank in dismissing Sh. K. Sathyanarayana, Cashier from the services of the Bank is justified. If not, to what relief is the workman entitled?"

2. I Party was working with the II party management Charge sheet was issued. Enquiry was conducted. On the basis of the enquiry report, I Party was dismissed and disputes is raised.

3. I party appeared and filed claim Statement. The case of the I party is that he was working as cashier from 8-7-1988. He was working properly and sincerely. He was dismissed illegally w.e.f. 21-11-1989 but continued to be upto 21-4-1990. Charge sheet were issued and the allegations are false. He has not misappropriated a sum of Rs. 1500.00, Rs. 100.00 and Rs. 600.00 respectively and the charges are not proved and the enquiry is not correct. No proper enquiry was conducted. The Enquiry report is not correct. Full opportunity was not given to defend himself. Action of the management is illegal. The I party has prayed to allow the reference.

4. The II party appeared and filed Counter Statement. The case of the II party is as under.

5. The I party committed misconduct and Charge Sheet was issued on 23-7-1988. One Mr. Nagesh Nayak of M/s. Chandrakanth Anatharam and Associates, Bangalore gave a complaint stating that a sum of Rs. 1500 credited into the account of Sri K. Rangappa on 8-7-1988 by L. P. Bhuvaneshwari has not been accounted for and the investigation revealed that the I party received case of Rs. 1500.00 after affixing the cash receiving seal and after putting initials by the party as L. P. Bhuvaneshwari. But I party did not show the same in the Receipt Shroff Book and misappropriated the amount. Again on 1-8-1988 the I party approached the complainant and handed over a counter foil dated 8-7-1988 which has not been shown in

the books of account. On 25-11-1988, Shri N. S. Patil has complained that a sum of Rs. 600.00 has not been remitted to his account on 1-7-1988 and entered in his passbook but subsequently the same has been rounded off and the balance is reduced. On 12-7-1988, the I party received a sum of Rs. 100.00 from Mrs. Marry Louis to credit to her SB account and issued counter foil but he failed to reflect the same in the cash book and misappropriated the amount. Enquiry was properly held, the action of the management is correct and the management is justified in its action.

6. On behalf of the management MW 1 was examine and the matter was closed. This court by its order dated 4-3-1999 held that the Domestic Enquiry is Fair and Proper. Thereafter the case was posted for Arguments on merits for both sides. I party has filed Written Arguments and I have read the same carefully.

7. The II party argued that the misconduct is proved and the money of the Customers was misappropriated by the I party and the same is prove and report of the Enquiry Officer is not preverse and therefore the action of the Management is correct.

8. The evidence recorded by the Enquiry Officer is not sufficient to say that the I party has misappropriated. The management witness says that Ex. M3 are different to that of Ex. M2. The records directly do not prove the misappropriation of Rs. 1500.00 by the I party. When Counter foils belonging to one account is separate, the book form is produced only in order to prove that the counter foil is not genuine. The suspicion raised in Ex. M2 is proved in the absence of the remaining book forms which are not produced. Some how the evidence is not clear, to fix responsibility on the I party. The appreciation of the evidence by the Enquiry Officer is not correct.

8. Taking all this into consideration, I am of the opinion that the action of the Management in dismissing the I party is not proper and this is a case in which a lenient view can be taken.

9. Accordingly, I pass the following order.

ORDER

The Reference is partly allowed. The Order of dismissal is set aside. The Management is directed to reinstate the I Party to the post from the date on which he is dismissed. No back wages are allowed.

(Dictated to the LDC, transcribed by him, corrected and signed by me on 4th June 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का. प्रा. 1830.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-

श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 2-07-2001 को प्राप्त हुआ था।

[सं. एल-12012/69/95-आई आर (बी-II)]

सी. गंगाधरन, अव्वर सचिव

New Delhi, the 3rd July, 2001

S.O. 1830.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 02-07-2001.

[No. L-12012/69/95-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/118/96

Presiding Officer: Shri K. M. Rai,
Shri P. K. Samanta,
through Secretary,
Bank of India Employees Union,
Russel Chowk,
Jabalpur.

.... Applicant

Versus

The General Manager,
Bank of India,
Napier Town,
Russel Chowk,
Jabalpur.

.... Non-applicant

AWARD

Passed on this 25th day of June, 2001

1. The Government of India, Ministry of Labour vide order No. L-12012/69/95-IR(B-2) dated 26-5-97 has referred the following dispute for adjudication by this tribunal—

"Whether the demand of the Bank of India Employees Union, Jabalpur on the management of Bank of India, Jabalpur for grant of two additional increments and promotion to Shri P. K. Samanta clerk by treating him at par with graduate from the entitled dates, is justified? If not, what relief is the said workman entitled to?"

2. The workman did not appear before this tribunal when the case was called on for hearing. Hence proceeded ex parte against him.

3. The workman has not been able to establish his claims as referred for adjudication. No Dispute exists between the parties. In view of this fact, No Dispute Award is passed.

4. On the above said reasons, the workman is not entitled to any relief as claimed by him. The reference is accordingly answered in favour of the management and against the workman.

5. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का. आ. 1831.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबन्धकों के

संबन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था।

[सं. एल-12011/36/92-आई आर (बी-II)]

सी. गंगाधरन, अव्वर सचिव

New Delhi, the 3rd July, 2001

S.O. 1831.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 02-07-2001.

[No. L-12011/36/92-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT 'SHRAM SADAN', III MAIN, III CROSS, II PHASE TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated: 19th June, 2001

PRESENT:

Hon'ble Shri V. N. Kulkarni, B.Com., LL.B.,
Presiding Officer.

CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. No. 88/92

I PARTY

The General Secretary,
Union Bank of India Employees Association,
Karnataka Unit,
No. 582, Avenue Road,
Bangalore-560002.
(Advocate: Shri Sathya Narayan)

II PARTY

Managing Director,
Union Bank of India,
Central Office,
No. 239, Bombay Reclamation Point,
Nariman Point,
Bombay.
(Advocate: Shri K. R. Anand)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/36/92-IR(B-II) dated 11-12-1992 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the part of the management of Union Bank of India for not regularising the services of seven farm labourers namely Shri Nanjundappa, Annivappa, Appaiappa Smt. Lakshmakka, Smt. Achaaramma, Smt. Sampangamma and Smt. Chikkaivamma along with the consequential benefits is justified? If not what relief the workmen are entitled to?"

2. The first party union workmen numbering seven persons namely Shri Nanjundappa, Annivappa, Appaiappa, Smt. Lakshmakka, Smt. Achaaramma, Smt. Sampangamma and

Smt. Chikkajayamma were working with the Second party management. Their grievance is that they are not regularised and therefore dispute was raised.

3. The first party union on behalf of the workmen filed Claim Statement.

4. The case of the first party workmen is that the workmen joined the services of the Second party during the year 1981 as Gardeners and they are working continuously and in the beginning they were paid Rs. 3 per working day and after that wages was increased as Rs. 15 per working day. Attendance Register is maintained in respect of these workmen. The management has not regularised their services and the action of the management is not correct. There is unfair labour practice and the union has prayed to pass award in its favour.

5. Second party appeared and filed Counter.

6. The case of the second party in brief is as under :

7. The main contention of the Second party is that it wanted to impart training to employees in order to improve the calibre of its employees, so that they may render better qualitative service to the customers. For this, a suitable premises was needed. The present premises of the Staff Training College was purchased in the year 1981. The Staff training college has a total area of 36 acres of land. The land lord was not ready to sell only the built up area as stated in para 3 of the Counter.

8. In para 4 it is said that the banking industry is an industry as defined in I.D. Act, 1947. The farm labourers have been engaged to do seasonal work of farming and are paid according to minimum wages applicable in the State. The activity of farming is neither business nor trade, nor an undertaking, nor manufacturing process, nor calling of an industry or incidental to it. The nomenclature farm labourers does not find place in any of the Award of Bi-partite Settlements. Therefore, the demand for payment of wages applicable to the Bank employees along with all other benefits have no merits at all. Therefore the dispute itself is not maintainable. Some other details are stated in para 6 and 7 and it is alleged that the dispute is not maintainable.

9. It is the further case of the management that these farm labourers were paid wages daily and no appointment order was given to them and none of these workmen have worked more than 240 days and therefore there is no merit in this dispute. For these reasons and some other reasons the second party has prayed to reject the reference.

10. It is seen from the records that on behalf of the management MW1 is examined who is an officer with the Second Party management. Against this WW 1 & 2 examined. I have read the evidence of these witnesses carefully. I have perused all the documents and scrutinised the material.

11. According to the evidence of MW1, training college is covered an area of 16 acres and these workmen are working as farm labourers as casual employees from 1981. But he says that they were not working continuously but during the course of cross examination he admits that these workmen were working continuously from 1981. This itself is sufficient to say that the action of the management in not regularising these workmen is illegal.

12. It is in the evidence of MW1 that attendance registers are maintained in respect of these farm labourers. It is only said by MW1 that to the best of his knowledge none of these workmen worked more than 240 days. Management has not adduced any clear and cogent evidence to say that these workmen have not worked continuously for 240 days. MW1 says in his cross examination that he does not have personal knowledge about the work and other related incidents regarding first party workmen. He has no idea whether the land is used to grow Teak.

13. It was argued by the learned counsel for the second party that the workmen have not proved their age and many of them have attained superannuation and therefore there is no merit in this dispute. It was also argued by the management that these workmen are only farm workers. They are not entitled for regularisation. One thing is clear from the evidence of MW1 that these workmen were worked regularly since 1981. MW1 says in his cross examination that there is

an officer for maintaining this farm house who will look after these workmen. In other words this MW1 is not aware of any facts regarding these workmen. Management has not adduced any clear and cogent evidence to show that these workmen have not continuously worked. We are having the evidence of WW1 & II. According to their evidence they are working continuously. They are cross examined at length but nothing is made out from his cross examination. The learned counsel for the management has relied Civil Appeal No. 1813/1992 dated 29th April 1992 SC. I have read the above decision very carefully. The facts of the case on hand are quite different from the facts of the above decision of the Hon'ble Supreme Court. The management cannot take the benefit of the principles held in the above decision.

14. The learned counsel for the first party workman has relied (1996) 2 Supreme Court cases 293. I have read the above decision very carefully. Keeping in mind the principles held in the above decision, the fact that these workmen have continuously worked since 1981, that the management has to regularise these workmen.

15. Accordingly reference is answered holding that the workmen are entitled for regularisation and I proceed to pass the following order :

ORDER

The reference is allowed. The management is directed to regularise these workmen as per seniority and in accordance with rules and service conditions which are with the management. Accordingly reference is answered.

(Dictated to PA transcribed by her corrected and signed by me on 19th June 2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1832.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कार्यकारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था ।

[सं. एल-12012/6/91- भाई धार (बी-II)]

सी. गंगाधरण, प्रवर सचिव

New Delhi, the 3rd July, 2001

S.O. 1832.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 2-7-2001.

[No. L-12012/6/91-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

"SHRAM SADAN", G.G. PALYA, TUMKUR ROAD, YESHWANTPUR, BANGALORE

Dated : 20th June, 2001

PRESENT :

Hon'ble V. N. Kulkarni, Presiding Officer.
C.R. No. 36/91

I Party :

Shri Ankaiah,
S/o Late Madaiah,
Peduvanagar, T. Hosahalli Post,
Kanakapura Taluk,
Bangalore District.

II Party :

The Deputy General Manager
Syndicate Bank,
I R Cell, Zonal Office,
Gandhinagar,
Bangalore-9.

APPEARANCES :

I Party—K. N. Subramanyam, Advocate.

II Party—Pradeep S. Sawkar, Advocate.

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/6/91-IR-B-II dated 25-6-1991 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Syndicate Bank, Bangalore is justified in terminating the services of Sh. Ankaiah, Clerk, KSRTC Extension Counter, Syndicate Bank, Bangalore w.e.f. 31-10-1989 is justified ? If not, to what relief the workman is entitled?"

2. I party was working with the II party as Cashier. Charge Sheet was issued. Enquiry was held. On the basis of the enquiry report he was terminated and therefore dispute is raised.

3. I party appeared and filed Claim Statement. The case of the I party in brief is as under.

4. I party joined the services on 18-10-1972. He worked at various places. He worked as Clerk-cum-Cashier. It is his further case that inspite of his loyal services. Charge Sheet was issued for shortage of Rs. 45,500. On 3-12-1982 the I party was working as Cashier in BTS Extension counter alongwith the Counting, Bundling, Stitching and Accounting Cashiers namely Sridhara Murthy and Srinivasa Murthy. To facilitate the BTS Depot, to remit the day's collection and also for the Salary payments and other activities of BTS Depot there was extension counter. The bulk amount will be retained by the Counting Cashiers and later the loose cash deposited at the Extension Counter. Cashier will verify credit challans. After the business transaction on 3-12-1982 the cash was tallied and closed as per the instructions of the higher officers of the KSRTC Extension Counter. This is the procedure adopted in day-to-day transaction. On 4-12-1982 the bank started

functioning for public transaction from 10.30 a.m. onwards. The I Party came late to the bank and another substitute was working as a Cashier in KSRTC Extension Counter. On 4-12-1982 to his surprise one Mr. R. Srinivasa Murthy was working as Cashier in the KSRTC Extension Counter and also handling the Single Locker. When the I Party reported for duty, he was asked to work as Cashier but he refused and protested. He was given details about the duties in the Claim Statement. The I party wrote the single locker scroll ledger page No. 108 and called Mr. Sridhara Murthy to verify the days account. The I party submitted the accounts alongwith the rough note of denominations written by the Officer-in-charge and on verification it was pointed out by Sridhara Murthy that there is shortage of cash amounting to Rs. 45,500 in the Single Locker. The I Party approached the Manager and asked to give account for a sum of Rs. 45,500 as per the rough note given to him to enter the Single Locker Scroll Ledger. Both of them again went inside the counting cabin and had discussions and after coming out of the cabin, the Officer-in-charge and Mr. Sridhara Murthy instructed the I party to cancel the entries in the Single Locker Scroll Ledger page No. 108 and revised rough note for loose cash denominations for Rs. 2,937.69. The Officer incharge mentioned an amount of Rs. 5,00,817.69 and that too without any remark or without the knowledge of the I party. The Officers arrived at the Extension Counter and had discussion with the Manager and custodian Sridhara Murthy and substitute Cashier upto 11.10 hours and thereafter I party was called and Assistant General Manager informed that there is a report by the Manager regarding handling of Cash in the Extension Counter and there is shortage of Cash. The I party denied the charges. The enquiry is not correct. The action of the management is not proper. The I party has not committed any misconduct. I party for these reasons has prayed to allow the reference.

5. II party appeared and filed counter. The case of the II party in brief is as under.

6. According to II party on 4-12-1982, while the I party was working as Cashier in the KSRTC Extension Counter Bank and incurred Cash shortage of Rs. 45,500 and the Officer-in-charge called upon the I party to reimburse the cash shortage that the I party submitted a letter dated 4-12-1982 that he handed over the amount of Rs. 45,500 to one Sri A. Ramesh Kini but he failed to reimburse. The I party has committed misappropriation causing serious financial loss to the Bank. The explanation given by the I party was not correct. Enquiry is correct. The allegations are proved and it is stated that the enquiry is fair and proper, and the management is justified in imposing the punishment. It is true on 4-12-1982. I party came late and one Sri Srinivasa Murthy was working in the cash department. The I party protested to work as Cashier on that day. He preferred to work as Cashier. It is the further case of the management that the I party was prosecuted by the Wilson Garden

Police Station and he was acquitted. It is said that it was not a clean acquittal. The I party has misappropriated the amount and the management for these reasons has prayed to reject the reference.

7. It is seen from the records that on behalf of the management MW-1, Kumar was examined who conducted enquiry. Against this WW-1 was examined. This court by its order dated 7-6-1999 passed order holding that the Domestic Enquiry is true and correct. There after matter was posted for arguments. I have heard both sides. I have gone through the material before me, the evidence and the enquiry proceedings carefully. The I party filed lengthy arguments. I have gone through the same carefully.

8. It was argued by the learned counsel for the II party that in the instant case, the I party has misappropriated a sum of Rs. 45,500.00 and this being a serious in nature, the action of the management is correct and there is no merit in this reference. Against this it was argued for the I party that the charge is not proved and it was further submitted that he was prosecuted by Wilson Garden Police Station for misappropriation of funds of the bank, but he was acquitted by the competent Criminal Court and only the Higher Officers have filed false case against him and he has not misappropriated any amount. From the evidence and the circumstances, it is clear that the Criminal Court has acquitted I party from the charge of misappropriation. On going through the evidence recorded by the Enquiry Officer it is not clear that the charge of misappropriation is directly proved against the I party. Regarding shortage there is contradiction. The finding of the Enquiry Officer is not proper and does not clearly establish that the I party has misappropriated a sum of Rs. 45,500. The learned counsel for the II party relied on some decisions :

- (a) 1995 (1) LLJ Kar (DB)-1995 (1) LLJ 233(SB)

D. Padmanabudu vs. Bank of India & Another

Once the enquiry is properly held and the Management has thought fit to pass an order of dismissal considering the nature and gravity of the act committed by the employee, it is not for the Court including the Labour Court to interfere with such order of management. These being a case of misappropriation by a person who was holding the position of Accounts Clerk in a Bank it cannot be said that the bank had taken a wrong view of the matter and the punishment was unduly harsh.

- (b) 1998 SC 2311-1998 Lab IC 2514 Union Bank of India vs Vishwa Mohan

The Hon'ble Supreme Court has categorically held that the Court cannot go into the question of imposition of punishment. It is for the Disciplinary Authority to consider what be the nature of the punishment to be imposed upon the misconduct proved against him.

The Hon'ble Supreme Court has held in this case as under :

It needs to be emphasized that in the Banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee. If this is not observed, the confidence of the public would be impaired.

- (c) 1996 Lab. I.C. 1058 (SC)

Municipal Committee Bahadurgad vs. Kishan Behan

The Hon'ble Supreme Court has held that there cannot be any other punishment other than dismissal in case of misappropriation and corruption.

- (d) JT 1998 (9) SC 37.

State of Karnataka & others vs. H. Nagaraja

Dismissal—Punishment imposed after departmental enquiry—Principal of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. Such is not in the present case. Hence the order of the Tribunal which is impugned before us is set aside and the order of the Appellate Authority is restored.

- (e) JT 1989 (2) SC 132

Union Bank of India vs. Paramananda

Dismissal from service—Inquiry Officer finding the Respondent guilty of fraudulent act for self aggrandisement—Penalty of dismissal imposed by the Disciplinary Authority—Scope of jurisdiction, power and authority of Tribunal—Held that Tribunal have no discretion or power to interfere with the penalty which is lawfully imposed.

- (f) 1987 Lab. I.C. 77

Wimco Shramik Union vs. Seventh Industrial Tribunal

Sec. 11-A of the I.D. Act—Powers of Labour Court of Tribunals to interfere with dismissal—Workmen found guilty of theft—Punishment of dismissal justified—No interference u/s 11-A on ground that workmen had rendered long period of unblemished service and stolen property was only Rs. 150.

- (g) AIR 1997 SC 2661

Punjab Dairy Development Corporation Ltd. vs. Kala Singh

Sec. 11-A—Powers of Labour Court—Reinstatement—Labour Court coming to the conclusion that misconduct had been proved against workmen and that dismissal was justifiable—Management also losing confidence that workman would faithfully carry on his duties in view of proof of misconduct—Refusal by Labour Court to exercise power u/s 11-A to grant relief of reinstatement with minor penalty—Is improper.

State Bank of India vs. Tarun Kumar Banerjee

Sec. 11-A I.D. Act.—Industrial Tribunal—Interference—With finding of misconduct recorded in domestic enquiry—Bank cashier found guilty in domestic enquiry of receiving excess money from customer and retaining same with intent to misappropriate—Finding proved to hilt by evidence of branch manager and head cashier who actually saw the incident—Domestic Enquiry found to be just and fair by Tribunal—Setting aside of finding of misconduct on grounds of non-examination of customer, non-production of money and non-production of confessional statement—Not proper.

(i) 2000(II) LLJ 1395(SC)

Janatha Bazaar South Kanara Central Co-operative Wholesale Stores Ltd. & others

Sec. 11-A I.D. Act—Labour Court finding charges of misappropriation and breach of trust against workmen proved—Once appropriation stood proved, showing sympathy held uncalled for.

(j) 2001(I) LLJ 1330 (SC)

Tripura Gramin Bank & Others vs. Tarit Baran Roy & Another

Sec. 11-A I.D. Act—Punishment of dismissal of cashier of bank from service—Principles of Sec. 11-A not to be grafted into disciplinary proceedings of Government servant or other employees governed by rules and not by I.D. Act.

(k) 2000(II) LLJ 1367 (Kar)

Managing Director B.G.M.L., K.G.F. vs. Sundareshan and others

Sec. 11-A—Employees dismissed from service charge of theft and fraud—Held, theft being heinous act any lenient view would cause damage to discipline in industry—Dismissal confirmed.

(l) 1999 (II) LLJ 155

Baby Vijayan vs. Industrial Tribunal & Another

Dismissal from service—For grave misconduct by employee in nationalised Bank—Post record in such cases has no relevance—Lokewise question whether Bank sustained loss also not relevant.

9. I have read all the decisions very carefully. The facts of the case on hand are quite different from the facts of the above decisions. In the instant case from the material before me it is clear that there is no prima facie cogent material to say directly that the misappropriation is proved against the I party. According to the I party on 4-12-1982 he came late to the Bank and one R. Srinivasa Murthy was working as Cashier. This circumstance also shows that there

is no direct evidence against the I party to prove misappropriation. For these reasons I have said that the facts of the case on hand are quite different from the facts of the above decisions. There is also explanation from the I party that on that day he handed over the cash to one Ramesh. The Enquiry Report is not clear and in my opinion the finding is perverse.

10. Considering all these, I am of the firm opinion that the action of the management in dismissing the I party from service is too harsh and not proportionate. I feel ends of justice will meet if the order of termination is set aside and backwages are not awarded.

11. Accordingly, I pass the following order.

ORDER

The Reference is partly allowed. The termination order is set aside. The management is directed to reinstate the workman from the date of his termination with continuity of service. In the given circumstances backwages are not awarded.

(Dictated to the L.D.C., transcribed by him, corrected and signed by me on 20th June, 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का.आ. 1833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधक के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथवा न्यायलय, बैंगलोर के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था।

[सं. एल-12012/7/91-आई आर (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 3rd July, 2001

S.O. 1833.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 02-07-2001.

[No. L-12012/7/91-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 'SHRAM SADAN', III MAIN,
III CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE

Dated, 22nd June, 2001

PRESENT :

Hon'ble Shri V. N. Kulkarni, B.Com., LLB.,
Presiding Officer,
CGI F-cum-Labour Court,
Bangalore.

C. R. No. 35/91

I PARTY

Shri K. Nagaraja,
Clerk, Canara Bank,
Devanagere Main Branch,
No. 2603/1,
M.C.C. "A" Block,
Devanagere-4.
(Advocate-Shri V. S. Naik)

II PARTY

The General Manager,
Canara Bank,
Head Office,
P.B. No. 5147,
M. G. Road,
Bangalore-560001.
(Advocate-Shri N. Venkatesh)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/7/91-IR(B-II) dated 24-6-91 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Canara Bank in dismissing Shri K. Nagaraja, Clerk from the service of the Bank is justified? If not, to what relief is the workman entitled?"

2. The first party workman was working with the second party as Clerk. Charge sheet was issued and enquiry was held against the first party. On the basis of the enquiry report first party was dismissed from service and therefore, industrial dispute was raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party is that he joined the services of the second party Bank as a Clerk from 30th May, 1977 and after the completion of period of probation he was confirmed. He served in different branches. It was alleged against him that when he

was working at Davanagere Branch, there was a complaint that a sum of Rs. 3,862 had been fraudulently withdrawn from the S.B. Account of Smt. Rathnamma by presenting a cheque No. 6109803 issued to her. The case of the first party is that he gave explanation saying that the allegations are false and he has not committed any fraud. The enquiry is not correct. Full opportunity was not given to him to defend during the enquiry. The evidence before the Enquiry Officer is not sufficient to prove the charges. The evidence of Hand Writing Expert is also not sufficient to prove the charge against the first party. The representation given by him was not considered by the Enquiry Officer properly. The first party workman has not committed the misconduct. The charge levelled against him is false. On that day, the first party workman had not only issued cheque book in respect of Smt. D. S. Rathnamma but he had also issued several other cheque books. Therefore, no motive can be attributed against the first party workman. The penalty imposed is not sustainable and the action of the management is not correct. The first party has prayed to pass award in his favour.

5. The case of the management in brief is as under:

6. The charge No. 1 against the first party workman is that he gave a false certificate while getting appointment regarding his caste. On enquiry it is said the first party had furnished false information.

7. Second charge is that the first party had fraudulently withdrawn a sum of Rs. 3862 from the account of Smt. Rathnamma bearing A/c No. 31942 and it was complained by Smt Rathnamma. The enquiry was correct and all the formalities were completed and full opportunity was given to the workman and the allegations made by the first party regarding enquiry are not correct. The first party has fully participated in the proceedings. The first party committed misconduct and on the basis of the enquiry report he was rightly dismissed and the action of the management is correct.

8. Second party is a Nationalised Bank dealing in crores of rupees of public money and employees are expected to be persons of highest integrity and honesty capable of maintaining mental balance in the face of various temptations and opportunities which are laid open in view of the sensitive and delicate nature of duties that they are called upon to perform. In view of these facts action of the management is correct. There is no merit in this reference.

9. It is seen from the records that this court by its order dated 28th March, 1994 has passed orders holding that the DE held against the first party is not in accordance with the principles of natural justice and the same is illegal. Thereafter IA No. 1 was allowed and the management was directed to pay 50 per cent of the last drawn salary to the first party till the disposal of this reference.

10. It is seen from the records that the enquiry was held illegal. The management examined four witnesses of the bank and also Hand Writing Expert was examined on commission.

11. Against this the first party workman gave evidence. Various documents are marked in the evidence of management witnesses.

12. I have heard both sides in detail. I have carefully read the evidence adduced by the parties. In the instant case the domestic enquiry is held as illegal and in view of this the management was directed to lead evidence to prove the charges against the first party. It was argued by the learned counsel for the first party that so far as charge of furnishing false certificate is concerned, nothing has to do with the reference under question. The learned counsel appearing for the first party in detail read the evidence of the management witnesses and submitted that with the evidence of MW-1 to MW-4 and Hand Writing Expert. The charges are not proved at all.

13. MW1 is Mr. K. V. Chalawadi. According to his evidence on 16-5-1988 first party was not in the work of issuance of cheque books. One Customer, namely Nagarathnamma came with the requisition to get cheque book and he has done the same work on verification of signature etc. MW1 says in his cross examination that he passed the said cheque Ex. M20 and it contains his signature. He further says in his cross examination that before passing the cheque he has to verify the date of the cheque, amount written in the cheque and signature of the drawer. Ex. M20 pertains to a customer namely D. S. Rathnamma and he used to verify the signature of the customer in the cheque with the specimen signature already given by the customer in the Bank. Ex. M21 is the card containing the specimen signatures of the customer and he was satisfied with those signatures. He found signature of Rathnamma in two places, one at front and the other on the back side of the leaf. With this cross examination of MW1 it is clear that this witness has passed the cheque after verification and satisfaction.

14. In other words there is no direct evidence against the first party to prove the charge of withdrawing fraudulently the amount from S.B. Account of Smt. Rathnamma. MW1 further has stated in his cross examination that he is unable to say the identity of the person who had presented Ex. M20 to the bank and when the cheque was presented he checked the same and he has seen the 3rd party signature on the back side of the cheque and he called him to see him in person by announcing the token No. given to the cheque but the person who had given the cheque had not appeared before him. With this cross examination I have no hesitation to say that when the 3rd person presented cheque and without seeing him, MW1 should not have passed the cheque but he has passed it. MW1 further states in his cross examination that he did not inform the cashier about the absence of the 3rd party. He has also stated that he has not verified with the cashier when the cheque was encashed and by whom. He further says that when he passed the cheque he was satisfied with the signature and therefore he passed the cheque. He says after some time later he found some differences in the signature.

15. With the above cross examination it is clear that the evidence of this witness is not helpful to prove the charge against the first party. We have the evidence of MW2 but in my opinion this evidence is also not sufficient to prove anything against the first party. On the other hand this MW2 says in his cross

examination that the Misc. Clerk can also issue cheque books if there is heavy rush on the instructions of manager and on that day the first party issued cheque books to four persons from his counter.

16. It is clear from this cross examination that on that day the first party had not issued only one cheque book of Smt. Rathnamma but he had issued some other cheque books and therefore no motive can be attributed against the first party. Then we have the evidence of MW3 and in my opinion his evidence will not add anything to prove the charge against the first party. On the other hand this MW3 categorically states in his cross examination that it is true that in the statements given by the officials of the bank no body has stated that the first party has committed this fraudulent transaction. With this cross examination what more material required to say that the management has miserably failed to prove the charge against the first party. MW4 has passed the cheque and has given evidence that the cheque was in order so he passed for payment. He says in his cross examination that he did not ask the party who presented the cheque to put his signature once again in his presence. Now the only evidence which was vehemently relied by the management is that of Hand Writing Expert.

17. At the very outset I am of the opinion that the evidence of Hand Writing Expert is also not helpful to prove the charge against the first party. Hand Writing Expert has also stated in his cross examination that he has not compared the front signature with the back signature of Ex. M-20 written in Kannada. He further says that he has not examined the signature in English found on the back of the Ex. M-20. He admits in his cross examination that standard writings are always preferable for the purpose of comparison. In the instant case the stand and hand writing of the first party was not taken for comparison.

18. The learned counsel for the first party relied 2 decisions namely AIR 1963 SC Page 1728 and AIR 1967 SC Page 1326.

19. I have read the above decision carefully and I am of the opinion that the evidence of hand writing experts will also not help the management to prove the charges against the first party.

20. We have the evidence of workman who has said that on that day he had issued 4 cheques to 4 customers including a lady customer by name D. S. Rathnamma. WW1 has denied all these suggestions and stated that he has not withdrawn any amount as alleged by the management. With this I am of the opinion that the evidence of WW1 seems to be natural.

21. I have given my best consideration to the evidence before me and I have scrutinised the same very carefully because in the instant case domestic enquiry is held illegal and I am of the opinion that the management has miserably failed to prove the charges against the first party.

22. In the result I proceed to pass the following order :

The order of dismissal is set aside and the management is directed to reinstate the first party in his original post with continuity of service. It was vehemently

mently argued by the learned counsel for the I party that to the instant case charges are not proved by the management and therefore the first party workman is entitled for full back wages. There is merit in this arguments. The management is directed to pay full back wages to the first party by deducting the interim payment made to him as per the order of the court. Accordingly reference is answered.

(Dictated to P.A. transcribed by her corrected and signed by me on 22nd June, 2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का.प्र. 1834.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध निवृत्तों और उनके कर्मचारों के बीच, अर्थात् औद्योगिक विवाद में औद्योगिक अधिनियम, 1947 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था।

[स. एन-12012/210/98-आई. आर. (बी-II)]

सो. गंगाधरण, अवसर सचिव

New Delhi, the 3rd July, 2001

S.O. 1834.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Patna as shown in the annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 02-07-2001.

[No. L-12012/210/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, PATNA

Reference No. 168 of 1999

Ref. No. 2(c) of 2001

Management of UCO Bank, Zonal Office, Maurya Lok Complex, Patna and their workman Sri Ziyaur Rehman represented by UCO Bank Employees Association, Patna.

For the Management : Sri P. K. Sinha, A.C.O.,
UCO Bank, Patna.

For the Workman : Sri B. Prasad, State Secretary,
UCO Bank Employees Association,
Patna.

PRESENT :

Sri S. K. Mishra, Presiding Officer, Industrial
Tribunal, Patna.

AWARD

The 22nd June, 2001

Initially the Central Government in exercise of powers U/s 10(1)(d) of the Industrial Disputes Act by order No. L-12012/210/98/IR(B-II) dated

26-3-1999/30-3-1999 referred the following Industrial dispute between the Management of UCO Bank, Zonal Office, Maurya Lok Complex, Patna and their workman Sri Ziyaur Rehman has represented by UCO Bank Employees Association for adjudication to the Central Government Industrial Tribunal No. 2, Dhanbad :

"Whether Shri Ziyaur Rehman has worked from 1-1-1991 to 31-1-1997? If yes, whether the action of the Management of UCO Bank, Patna in terminating his service w.e.f. 1st September, 1997 is justified? If not, what relief the workman is entitled to?"

2. Subsequently by order No. L-12012/210/98-IR (B-II) dated 23-11-2000 the Central Government withdrew the proceeding of the said dispute from the Central Government Industrial Tribunal No. II, Dhanbad and transferred to this Tribunal for adjudication.

3. Both parties have filed their respective written statements. The claim of the workman Sri Ziyaur Rehman as stated in his written statement in brief is that he was orally appointed by the Management of UCO Bank, Kishanganj Branch, for discharging the duties of a Peon on and from 1-1-1991. He worked from that date till 31-1-1997 uninterrupted. All of a sudden in the evening of 31-1-1997 the workman was orally told not to attend his duties from the next date as his services stood terminated. The further case of the workman is that during the period of his work in the Branch he discharged the normal duties of a Peon. He worked from 10 A.M. to 6 P.M. on every working day. Initially he was being paid wages at the rate of Rs. 15 per day which was gradually increased upto Rs. 42 per day. After termination the workman approached the Management on a number of occasions for his reinstatement but without any result. There were permanent vacancies of two peons at the Branch against which the workman had been engaged by the Branch to perform the duties of a Peon. The action of the Management in terminating his services is retrenchment under the provisions of Section 2(oo) of the Industrial Disputes Act. He was neither given any notice nor pay in lieu of notice nor any retrenchment compensation at the time of his retrenchment under the provisions of Section 25F of the I.D. Act. Although the workman was performing all the similar duties of a permanent peon, he was paid very low wages in comparison to what a permanent peon is paid in violation of the principles of 'equal pay for equal work'. The Management being a State within the meaning of Article 12 of the Constitution of India was expected to behave like a Model and enlightened employer. The workman worked for over seven years. When the Management did not accede to his request for his reinstatement the workman approached the sponsoring union which raised an industrial dispute before the A.L.C.(C), Patna. Ministry of Labour, Government of India. The A.L.C.(C), Patna held several conciliation proceedings, but due to the stubborn attitude of the Management the conciliation proceedings ended in failure and after submission of the failure report by A.L.C.(C), Patna the Central Government made the present reference for adjudication. According to the workman the termination of his service is arbitrary, unlawful and unjustified and he is entitled for reinstatement with back wages and

regularisation of his service in subordinate cadre as he worked more than 240 days in 12 calendar months.

4. The case of the Management as has been made out in its written statement in brief is that the concerned workman had been engaged by the Branch Manager of Kishanganj Branch of UCO Bank on Casual basis for performing certain contingent nature of work who had no authority to engage. Thus, the engagement was void ab-initio. Ever since the nationalisation, the Bank has become a state within the meaning of Article 12 of the Constitution of India and is obliged to function within the parameters of articles 14 and 16(1) of the Constitution of India in the matter of appointment. In the present case the normal procedure for appointment was not followed. No advertisement was made inviting applications including requisition of names of candidates from the local Employment Exchange. Further there was no vacancy of Peon in the Branch when the workman had been engaged. According to the Management as the workman was engaged unauthorisedly and unconstitutionally he can not maintain a legal right for continuation of such a working in the guise of the provisions of the I.D. Act. At no time approval to the engagement or payment of wages was obtained from the competent authority. No appointment letter was issued to the workman.

5. Further case of the Management is that the Bank has been incurring heavy losses since last several years. The expenditures incurred over payment to illegitimately engaged workmen come to Rs. one crore approximately per year in Bihar alone. A policy decision was taken by the Management to discontinue engagement of such casual workers including the concerned workman. On 29-3-1997 the Zonal Manager of the Bank directed that no engagement of casual workers excepting those who stand empanelled as casual workers would be made by any Branch Manager or Head of the Office. It was also made clear that the authority making such engagement will personally be responsible for such engagement.

6. The further case of the Management is that Sri Rehman had not been appointed to discharge the duties of a peon. He might have performed the duties of contingent nature like serving water and tea to the staff. Whatever was paid was in consideration of doing casual and contingent nature of job as prescribed by the Central Government. Neither Sri Ziyaur Rehman was maintaining a time schedule in attendance nor was he required to maintain any such schedule by the Management. It is denied that the services of Sri Rehman were terminated since there was no appointment made. The action of the Management in not engaging Sri Rehman does not amount to retrenchment as per the Industrial Disputes Act since he had no right to any post in the Bank. According to the Management the workman is not entitled to any relief.

7. A rejoinder to the written statement of the Management has also been filed on behalf of the workman reiterating his case. According to the workman he is a workman within the definition of Section 2(s) of the I.D. Act and his termination is retrenchment within the meaning of Section 2(cc) of the I.D. Act. As the mandatory provisions of Section 25F were not complied with the retrenchment is illegal. Once a

Reference is made for adjudication the dispute is to be decided within the conceptual frame work of the I.D. Act. The words 'authorised/unauthorised', 'regular/irregular' are alien to the I.D. Act. The Management resorted to unfair labour practice while extracting the services of the workman on exploitive basis as per schedule V of the I.D. Act. The Management while keeping the workman on tenterhook for years did not act properly and fairly with the workman.

8. The following issues arise for adjudication:--

- (i) Whether Sri Ziyaur Rahman worked from 1-1-1991 to 31-1-1997 and if so whether the action of the Management of UCO Bank, Patna in terminating the services thereafter is justified ?
- (ii) If not to what relief or reliefs is the workman entitled to ?

FINDINGS

9. Issue No. (i):—Before I proceed to decide the issue I would like to mention briefly the evidence both oral and documentary, adduced by the parties in the case. The Management has not adduced any oral evidence. Only one witness has been examined on behalf of the workman and he is W.W.1 Sri Ziyaur Rehman, the workman himself. In his evidence the workman has supported the facts of the case as detailed in his written statement and has stated that he worked continuously from 1-1-1991 to 31-1-1997 i.e. over six years. He has also stated that he had worked more than 240 days in a calendar year preceding his retrenchment, but he has said nothing in his deposition as to when he was retrenched. He has said that before retrenchment the mandatory requirements of notice or notice pay or retrenchment compensation were not complied with. His duties included bringing out ledgers, registers, token from the Almirahs and placing them on Tables, bringing cash Box from the Strong Room, stitching of currency notes and vouchers, serving tea, water to the staff, distribution of Daks through Peon books, visiting post office for posting and bringing mails etc.

10. Both parties have filed zerox copies of certain documents, majority of which have been admitted into evidence on formal proof having been waived by each other. First I would like to mention the documents filed on behalf of the workman. Ext. W and W/1 are zerox copies of payment vouchers dated 31-7-1995 and 18-1-1996 respectively. The signatures of the workman appear on the back of each of the vouchers in token of having received the payment of wages. No other document has been filed on behalf of the workman.

11. It may here be mentioned that on 26-8-1990 and also on 4-4-2001 petitions were filed on behalf of the workman requiring the Management to furnish details of work (date-wise, month-wise and year-wise) together with the amounts paid to the worker. In compliance to that petition the Management on 18-4-2001 filed a petition giving details of work of Sri Rehman month-wise and year-wise. The said petition of the Management has been used by the workman and has been marked as Ext. W/2. The

Management has not however filed any information regarding the work of Sri Rehman date-wise or about payments of wages.

12. As regards the documents filed on behalf of the Management Ext. M is a payment voucher of the month of April, 1997. The date is over-written, it may either be 14 or 24 of the month of April, 1997. It is noted on the body of voucher that the payment was made for certain charges for 13-4-1997. Ext. M/1 is the xerox copy of the letter from the Reserve Bank of India dated 16-12-1997 stating therein that the earlier ban would continue for fresh recruitment of staff including for replacement of retirements, resignation etc. except recruitment of specialised Probationary Officers with the prior approval of RBI/GOI. Ext. M/2 is the xerox copy of the circular of the Bank dated 29-12-1983 relating to the procedure to be followed for recruitment to the posts in subordinate cadres. It has been filed by the Management to show that the procedure for recruitment was not followed while engaging the concerned workman. Ext. M/3 is the xerox copy of the order of the Calcutta High Court dated 4-8-1999 passed in W.P. No. 1390 of 1990. It was a writ petition for absorption of the remaining empanelled daily wages workers in the vacancies of the subordinate staff in pursuant to the agreement dated 10-10-1989 made between the Management of the Respondent Bank and the unions. This order shows that under the said settlement between the Management and unions the casual workers working continuously for 240 days or more in the subordinate cadre during the period of three years immediately preceding the settlement were to be absorbed in the permanent vacancies. The casual workers entitled for being absorbed in terms of the said settlement were empanelled for such absorption in vacancies as and when arose. The order further shows that altogether 460 casual workers were empanelled for absorption out of whom only 60 casual workers could be absorbed. Some of the remaining empanelled workers filed the writ petition before the Calcutta High Court stating therein that though there were vacancies they were not being absorbed. The Hon'ble Calcutta High Court ordered that the Bank authorities should consider the case of the petitioners and shall also the rest of the casual workers as and when restriction for appointment by the R.B.I. was lifted. Ext. M/4 is a xerox copy of one another circular of the Bank dated 28-4-1997 prohibiting engagement of unempanelled casual workers in the Offices. A direction was given to the Branches and other offices to disengage the daily casual workers other than the empanelled casual workers by 10th May, 1997. It becomes apparent that the concerned workman disengaged by the Branch Manager in view of the direction of the Head Office contained in this circular. Ext. M/5 is a xerox copy of the letter dated 29-3-1997 from the Zonal Office for disengaging the casual workers other than the empanelled casual workers.

13. The fact that Sri Ziyaur Rehman was a daily rated worker during the period from 1991 to 1997 is not disputed. According to the Management the workman did not work continuously and he did not perform the duties of a peon but he performed the duties of contingent nature like serving water, tea etc. to the staff. The Management has, however, not produced any evidence either documentary or oral to

show that in fact Sri Rehman performed only contingent nature of work occasionally during the aforesaid period. There is nothing even in the information furnished by the Management (Ext. W/2) that the workman did not perform the duties of a peon. It was submitted on behalf of the Management that as Sri Rehman had never been appointed it can not be said that his services were retrenched and so there was no requirement of compliance of provisions of section 25F of the I.D. Act. But it is well settled law that for the applicability of the provisions of section 25F of the I.D. Act, there need not be any formal letter of appointment or formal order in writing of termination, termination effected not by any voluntary order will also come within the meaning of the retrenchment u/s. 2(oo) of the I.D. Act. (1994 P.L.J.R. page 612). The plea of the Management that the Branch Manager who had engaged Sri Rehman had no authority to make such engagement or that the procedure prescribed for recruitment to sub-staff was not followed while engaging Sri Rehman and that since Sri Rehman had been engaged illegally and unauthorisedly he can not be reinstated to such illegal appointment can not be of any avail to the Management. It is now well settled law that the provisions of section 25F are applicable even to a daily rated workman who had continuously served for 240 days in a year (1997 ii S.C. cases page 396—Rattan Singh Vs. Union of India and another). A daily rated workman, who has completed service for 240 days within the meaning of S. 25-B can not be terminated from service on the ground of even misconduct without a departmental enquiry or without complying the provisions of section 25F of the I.D. Act 1944 (?) P.L.J.R. page 669. A.I.R. 1994 S.C. page 1638 Termination of employment on the ground of appointment being illegal will itself qualify retrenchment within the meaning of section 2(oo) of the I.D. Act. The idea of illegal or invalid appointment is quite foreign to the scheme of the I.D. Act. Section 2(s) of the I.D. Act which defines 'workman' does not have any such distinction I(1994)(2) P.L.J.R. page 240—Mithlesh Kumar Singh Vs. State of Bihar.

14. As per the information furnished by the Management in compliance to the requisition made by the workman (Ext. W/2) the workman had been engaged only for 116 days in the year 1991, and 47 days in the year 1992. Thereafter the workman was not engaged by the Branch in the year 1993 and 1994. The workman worked for 140 days in the year 1995, 253 days in the year 1996 and 33 days in the year 1997 upto April.

15. For applicability of the requirements of section 25F with regard to notice or pay in lieu of notice and payment of retrenchment compensation the workman must have worked in an industry continuously for not less than one year. As per the provisions of section 25-B of the I.D. Act the workman is said to have worked for a period of one year if he during the period of 12 calendar months preceding the date with reference to which his calculation is to be made, has actually worked for 240 days. According to the Management Ext. M the payment voucher dated 24-4-1997, was the last payment made to the workman. Thereafter he was not engaged. In other words the services of the workman were terminated w.e.f. 25-4-1997 and not w.e.f. 1-2-1997 as claimed by the workman. The statement (Ext. W/2) shows that

Sri Rehman worked a total period of 222 days in 12 calendar months preceding his retrenchment. In this view of the matter the provisions of section 25F of the I.D. Act become inapplicable. It was pointed out to me that though the case of the workman before the A.L.C.(c), Patna was that he was retrenched w.e.f. 1-9-1997, he changed his case before this Tribunal. Now he claims that he was retrenched with effect from 1-2-1997 so as to attract the applicability of the provisions of section 25F of the I.D. Act. In the order of Reference made by the Central Government also the date 1-9-1997 is mentioned as the date of termination as had been claimed by the workman. The workman (W.W.1) in cross-examination has admitted that he had filed a petition before the A.L.C. (c), Patna that he had worked upto 31-8-1997 but now he says that he had given the date 31-8-1997 by mistake in place of 31-1-1997. The workman has not however mentioned in the written statement that the date of retrenchment as mentioned in the order of Reference is wrong.

16. Further the workman has admitted that the two signatures appearing on the payment voucher (Ext. M) are his signatures. While admitting so the workman has added that he did not receive any payment through the said voucher. But it has never been the case of the workman that at times his signatures were obtained on the vouchers without any payment.

17. The workman, in his evidence has said that payment used to be made to him in his name and at times in the names of different persons. But he has not been able to disclose the names of such other persons except one Laxmi Pat who used to operate the Generator in the Branch. The workman had not examined the said Laxmi Pat to corroborate him on this point. It is possible that Laxmi Pat being the operator of the Generator was also paid wages and hence he also put his signature on the vouchers.

18. Sri. B. Prasad, representative of the workman, has pointed out to me that the Management at para 4(vii) of the written statement has admitted that no engagement of the workman was made after 31-1-1997. It was submitted on behalf of the Management that at the time when the written statement was drafted he had not received any information from the Branch as to upto what date the workman had worked. The representative of the Management came to learn the actual position when the information was obtained from the Branch in compliance to requisition made on behalf of the workman. This explanation of the Management appears plausible to me.

19. Moreover it is well settled law that the claimant can not take advantage of the weakness of the Management. The workman has not come before this Tribunal with clean hands and he has suppressed the material facts that earlier he had filed a petition before the A.L.C. (c), Patna that he had worked upto 31-8-1997. In the fact and circumstances of the case it becomes apparent that the workman changed his version and now he claims that he was terminated on 1-2-1997 and not on 1-9-1997 in order to prove that he worked a period of 240 days in 12 calendar months preceding his retrenchment. As such I find that I have no hesitation to hold that though the workman worked intermittently from 1-1-1991 to till 24-4-1997 he did not work 240 days

in 12 calendar months preceding his retrenchment. The issue no. (1) is accordingly answered.

20. Issue No. (ii):—Since the workman had not worked 240 days in 12 calendar months preceding his retrenchment there was no requirement for compliance of the provisions of section 25F of the I.D. Act. This being so the workman is not entitled to reinstatement or any other relief. The Reference is accordingly answered.

21. This is my award.

S. K. MISHRA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का.आ. 1835.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कारपोरेशन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था।

[सं. एल-12012/312/93-आई आर. (बी-II)]

सी. गंगाधरन, अवसर सचिव

New Delhi, the 3rd July, 2001

S.O. 1835.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workman, which was received by the Central Government on 02-07-2001.

[No. L-12012/312/93-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, "SHRAM SADAN" G. G. PALYA, TUMKUR, ROAD, YESHWANTPUR, BANGALORE-560022

Dated : 20th June, 2001

PRESENT :

Hon'ble V. N. Kulkarni, Presiding Officer

C.R. No. 11/97

I Party :

The General Secretary,
Corporation Bank Employees Guild,
Anand Plaza, Ananda Rao Circle,
Bangalore-560009.

II Party :

The Chief Manager,
Corporation Bank,
Head Office,
Bangalore-575001.

Appearances :

I Party : N. G. Phadke.

Advocate.

II Party : Pradeep S. Sawkar.

Advocate.

AWARD

1. The Central Government, by exercising the powers conferred by Clause (d) of section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. I-12012/312/93-IR(B-II) dated 24-03-1994 for adjudication on the following schedule.

SCHEDULE

"Whether the Action of the Management of Corporation Bank to recover the shortage of the Cash from Smt. Sumathi Shenoy is legal and justified? If not, to what relief the Workman is entitled?"

2. The I party union workmen is working with the II party. The management has recovered shortage cash from Smt. Sumathi Shenoy and therefore dispute is raised. The case of the I party Union workmen is as under.

3. The I party union workman is working as Clerk in the Bank. The relevant guidelines in counting note packets while remitting to the currency chest are stated in para 3 of the Claim Statement.

4. The receiving branch while accepting tenders comprising bundles of note packets properly sealed in the manner stated below :

(a) The receiving branch or the currency chest, while accepting tenders comprising bundles of note packets properly sealed in the manner stated above, need not resort to detailed counting of the currency notes. It is enough if the total number of bundles and the number of packets in each bundle are verified, after

ensuring that the seal on each packet is intact and there are no signs of tampering.

(b) However, where the sealed note packets do show signs of tampering, they should be subjected to detailed counting in the presence of the staff who brought the remittance. If any discrepancy is found in any packet the same should be returned intact to them. In case no discrepancy is found the packet should be reslatched with a fresh label of the receiving branch/currency chest and sealed with the plastic sticker.

(c) In the event of any discrepancy being subsequently detected in the sealed packets which do not show signs of tampering, the bank will have recourse to the cashier who made the packet and the officer who checked it for qualitative and quantitative contents respectively and the bank will hold them responsible for the discrepancy.

5. It is further the case of the I party that Senior Manager issued letter dated 27-03-1991 to Smt. Shenoy stating that a sum of Rs. 900/- is found to be short in the cash packets by her.

6. It is her further case that the workman by a letter dated 22-04-1991 requested the Manager of the bank to conduct a proper enquiry and apprehend the culprits, as she has counted the packets properly but nothing was done.

7. The bank by a letter dated 08-05-1991 informed Smt. Shenoy that on the basis of the report of the Investigation Officers and on their instructions to recover the money from her, she is advised to reimburse the entire money. It is the further case of the I party Union Workman that the action of the Management is not correct. Smt. Shenoy informed that the attempt in recovering money is totally unjustified and unwarranted.

8. It is the further case of the I party that she is not responsible for the shortage as explained in para 11 and 12 of the Claim Statement. The I party has prayed to pass award in her favour.

9. II party appeared and filed written statement. The case of the II party is as follows.

10. The decision directing Smt. Shenoy to recover shortage of cash is an administrative order. It has been done after giving chance and hearing the I party union workman. It is the further case of the Management that the dispute is misconceived. The I party union workman has not counted all the covering flags and they are not affixed on cash packets and she is responsible for the shortage.

11. It is the further case of the II party that the currency note bundles were sent to Mangalore currency chest and they returned some of the packets to Mangalore Bunder Branch on account of shortage of currency notes aggregating to Rs. 3914.00. In 65 Cash packets and then 11 packets bore the initials of the workman and in the cash packets verified and initialed on 12-9-89, 17-10-89 and 15-11-89 found that there was shortage of Rs. 900.00 and there were also denomination of Rs. 10.00. The order of recovery is passed only after following procedure. The action of the management is correct. The management has prayed for these reasons and for some others reasons to reject the reference.

12. It is seen from the records that on behalf of the management one witness is examined and he is Mr. T. Madava Nair.

13. He says that Smt. Shenoy was working in that branch as Special Assistant (Officiating) in cash department. She is supposed to perform the verification of Cash everyday both quantitative and qualitative in the packets. Ex. M-1 is the circular of cash department. If any excess is available it will be sent to currency chest office situated at Mangalore controlled by Reserve Bank of India. There was correspondence in respect of discrepancy of cash which are marked as Ex. M-2 to M-11. According to him it was not possible to find that there is no possibility for occurring such discrepancy and shortage. In this case they found shortage and the bundles were returned. Against this WW1 K. Krishna Raiya Kinni was examined. According to his evidence, he is working with the management since last 32 years. He has performed supervisory duties on many occasions. He deposed about the procedure of counting the notes and preparing bundles. According to his evidence if there is shortage of adhesive stickers, the concerned supervisor should bring to the notice of Branch Manager. He has also said that for a good number of period there was no adhesive stickers and the note bundles

were given to the Joint Key Holders without adhesive stickers and bundles were received and kept in the strong room. He says that note bundles are not considered to be complete in all respects if there is no adhesive stickers. He says that in this case, the note bundles were without adhesive stickers with this evidence of WW1. I am of the opinion that there is no clear evidence against the I party Union workman that the shortage was on account of her. According to this evidence the condition of the brought note bundles was not disputed by the management. There is lot of correspondence between Smt. Shenoy and the Management. No proper enquiry is held by the Management to fix the responsibility of the shortage.

14. It is seen from the records that only I party union workman was asked to explain some letters and she has suitably replied them. From the records it is clear that no proper enquiry is held by the Enquiry Officer to fix responsibility of the shortage. In the given circumstances, there should have been detailed enquiry, but the same is not done. Therefore the evidence of MW 1 is not sufficient to say that a proper enquiry was held by the management and the responsibility was fixed on Smt. Shenoy. WW 1 also says in his cross-examination that Smt. Shenoy has complained to the manager saying that stickers were not available at the time of preparing bundles. Of course some investigation was done as per the saying of the management, but that was not a proper enquiry.

15. I have given my best consideration to the material before me and I am of the opinion that the management has not properly conducted the investigation and the enquiry to fix the responsibility of shortage on Smt. Shenoy and therefore the action of the management is not proper.

16. Accordingly, I proceed to pass the following order.

ORDER

The Reference is allowed. The order of recovery of shortage of money is set aside. Accordingly the management is directed to pay the recovered amount to the I party Union workman.

(Dictated to the LDC, transcribed by him, corrected and signed by me on 20th June, 2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का.भा. 1836.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में निम्नलिखित आदेशों और उनके क्रमिकों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम/न्यायालय, जयपुर के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 02-07-2001 को प्राप्त हुआ था।

[सं. एल-12013/127/98-आई आर (बी-II)]

सी. गंगाधरण, अधर सचिव

New Delhi, the 3rd July, 2001

S.O. 1836.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 2-7-2001.

[No. L-12013/127/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के संख्या :—सी आई टी/जे-31/99

आदेश संख्या एल. 12013/127/98/आई आर (बी-II)

दिनांक 26-5-1999

संगठन सचिव,

एसोसिएशन ऑफ पंजाब बैंक एम्प्लाइज,

आचार्यों की हवेली,

फ़िशन मोल, जयपुर (राजस्थान)

—प्रार्थी यूनियन

ब्रह्म

क्षेत्रीय प्रबंधक,

पंजाब नेशनल बैंक,

रीजनल ऑफिस ए-5, आकाश दीप,

ट्रांसपोर्ट नगर, जयपुर (राजस्थान)

—अप्रार्थी

उपस्थिति :—

प्रार्थी की ओर से :—श्री आर सी जैन

अप्रार्थी की ओर से :—श्री राहुल शिवहरे

पंचाट की तिथि :—8-6-2001

पंचाट

केन्द्र सरकार के द्वारा उक्त आदेश के जरिये निम्न विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम 1947 कहा गया है) की धारा 10 की उपधारा 1 के खंड

(घ) एवं उपधारा 2(क) के प्रावधानों के अन्तर्गत न्यून निर्णय हेतु निर्देशित किया गया।

“Whether the action of the Punjab National Bank management of not adding the marks of the CAIB examination passed by the workman Sh. Subhash Chandra Ghiya as per Bipartite Settlement dated 29-3-94 is correct? If not, what relief the workman is entitled to and from what date?”

एसोसिएशन ऑफ पंजाब नेशनल बैंक एम्प्लाइज राजस्थान (जिसे बाद में यूनियन कहा गया है) की ओर से उसके संगठन मंत्री के द्वारा स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया जिसमें उल्लेख किया गया कि सुभाष चन्द्र घिया (जिसे बाद में कर्मकार कहा गया है) पंजाब नेशनल बैंक (जिसे बाद में बैंक कहा गया है) की पाँचबत्ती शाखा, जयपुर में कार्यरत था। दिनांक 5-5-99 को उसका स्वर्गवास हो गया। उसके उत्तराधिकारियों में उसकी पति श्रीमति मंजू घिया और अव्यस्क पुत्र अनुराग घिया हैं। श्रीमति मंजू घिया से उचित प्राधिकार पत्र बलेम प्रस्तुत करने हेतु प्राप्त कर लिया गया है। बैंक एवं कामगार यूनियन के मध्य कामगारों की पदोन्नति के संबंध में समझौते दिनांक 1-4-73 एवं 16-6-73 सम्पन्न हुए जिसमें समय-समय पर दिनांक 7-3-78, 17-9-84 व 1-11-88 एवं समय-समय पर संशोधित प्रावधान समझौते के जरिए लागू किए गए। उक्त समझौतों के जरिए प्राथमिकता सूची में उच्चतम स्थान प्राप्त व्यक्ति विशेष भत्ता के प्राप्त पदों पर तैनाती का पात्र माना गया। प्रस्तुत प्राथमिकता सूची में लिपिक पद की खरिण्डता निर्धारित करने हेतु समझौता दिनांक 1-11-88 को बैंक द्वारा परिपत्र दिनांक 28-11-88 द्वारा अधिसूचित किया गया जिसमें निम्न मापदण्ड निर्धारित किये गये :

(अ) बैंक के लिपिकीय वर्ग में प्रोबेशनर के रूप में नियुक्ति की तारीख से प्रत्येक पूर्ण वर्ष के लिए एक प्राथमिकता अंक दिया जायेगा जिसके अधिकतम 25 अंक होंगे।

(ब) शैक्षणिक एवं अन्य योग्यताओं में निम्न प्रकार प्राथमिकता अंकों का निर्धारण किया जायगा

स्नातक	2 अंक
स्नातकोत्तर डिग्री	1 अंक
विधि में डिग्री	1 अंक
सीएआईआईबी (प्रथम भाग)	2 अंक
सी ए आई आई बी (द्वितीय भाग)	2 अंक
स्नातक अथवा स्नातकोत्तर परीक्षा में कॉमर्स	1 अंक
आई सी डब्ल्यू ए/सी ए	1 अंक

समझौता दिनांक 1-11-88 के खंड 3 (घ) के अनुसार प्राथमिकता अंकों का निर्धारण प्रत्येक वर्ष की पहली जनवरी को किया जाता है : विशेष भत्ता प्राप्त पदों को भरने के लिये बैंक द्वारा परिपत्र दिनांक 6-6-90 जारी किया गया जिसके अनुसार प्रत्येक वर्ष के 1 जनवरी के आधार पर

लिपिकों व अधीनस्थ कर्मचारियों की प्राथमिकता सूची/वरिष्ठता सूची बनाये जाने का प्रावधान है व उसी वरिष्ठता क्रम के अनुसार विशेष भत्ता प्राप्त पदों पर नियुक्तियाँ दिये जाने का प्रावधान है जो कि कम्प्यूटर ऑपरेटर के विशेष भत्ता पद की नियुक्ति पर भी लागू है। बैंक प्रबंधन एवं कामेगार यूनिशन के मध्य कम्प्यूटर ऑपरेटर के चयन के संबंध में दिनांक 29-3-94 को समझौता सम्पन्न हुआ जिसे बैंक के द्वारा परिपत्र दिनांक 30-4-94 के जरिये अधिसूचित किया गया। उक्त समझौते के अनुसार कम्प्यूटर ऑपरेटर्स के चयन हेतु टेस्ट का आयोजन दिनांक 20-7-97 को किया गया व सफल उम्मीदवारों को परिपत्र संख्या 1116 के निर्देशों के अनुसार दिनांक 1-11-97 की वरिष्ठता सूची के आधार पर बैंक द्वारा 105 उम्मीदवारों का एक पैनल जयपुर शहर के कम्प्यूटर ऑपरेटर एवं स्टेण्ड बाई कम्प्यूटर ऑपरेटर के चयन के लिये जारी किया गया। समझौता दिनांक 29-3-94 में स्पष्ट उल्लेख है कि पैनल कम्प्यूटर ऑपरेटर की पोस्टिंग के लिए 3 वर्ष तक वैध रहेगा।

समझौते में यह भी उल्लेख है कि "The list of the employees qualifying the aptitude test will be arranged according to the inter-se-seniority (Which is to be determined as per Circular 1116)". इस समझौते के पैरा 13 में लिखा है कि "In the absence of a Permanent Computer Operator due to leave etc. the senior-most stand by Computer Operator (Seniority will be determined as per clause 1 & 2 above of settlement dated 29-3-94) will be allowed to work as Computer Operator". पैरा 15 के अंत में लिखा है कि "The eligible clerk from the panel in the order of seniority, shall be posted at the branch as stand by Computer Operator."

समझौते में यह भी उल्लेख है कि कम्प्यूटर ऑपरेटर की नियुक्ति वरिष्ठता क्रम में की जायेगी। बैंक द्वारा सहायक असोसिएट के समक्ष समझौते में स्वीकार किया गया कि कम्प्यूटर ऑपरेटर का पैनल समझौता दिनांक 1-11-88 के अनुसार तैयार किया गया है। कर्मकार का नाम बैंक द्वारा टेस्ट में सफलतम उम्मीदवारों की वरिष्ठता सूची के पैनल में क्रमांक 81 प्रदर्शित किया गया। दिनांक 1-11-97 को उसकी शैक्षणिक योग्यता बी कॉम, सी ए आई आई बी (प्रथम भाग) थी तथा बैंक में प्राथमिकता अंक 15 थे। माह मई 1997 में उसके द्वारा सी ए आई आई बी (द्वितीय भाग) परीक्षा उत्तीर्ण करने पर दिनांक 1-1-98 को उसके प्राथमिकता अंक 18 (1 अंक मेवावधि एवं 2 अंक उक्त परीक्षा उत्तीर्ण करने सहित) हो गई। इस वरिष्ठता को स्वीकार करते हुए बैंक द्वारा उस दो वार्षिक वेतन वृद्धियाँ स्वीकृत की गयीं। इस प्रकार उसका द्वितीय वरीयता अंक कम्प्यूटर ऑपरेटर पैनल में 81 के स्थान पर 55 होता है पर बैंक ने उक्त तीन अंकों का लाभ

उसे नहीं दिया। जबकि, राजेश शर्मा, लिपिक, जी कि पैनल में क्रमांक 52 पर था, को क्रम 1-1-98 की वरिष्ठता सूची के आधार पर 80 ए पर कर दिया गया व सुधीर शर्मा लिपिक का वरिष्ठता क्रम क्रमांक 74 से 60 ए कर दिया गया। कर्मकार की मृत्यु दिनांक 5-5-99 से पूर्व पैनल के क्रमांक 52 तक लगभग 35 सी. टी. ओ. की स्थायी नियुक्ति की जा चुकी थी तथा वर्ष 98 में इतने ही स्टेड बाई सी. टी. ओ. बैंक द्वारा भर्त किए गए थे। इस प्रकार, कर्मकार के तीन प्राथमिकता अंक जोड़े जाने पर वह वर्ष 1996 में सी. टी. ओ. अथवा स्टेड बाई सी. टी. ओ. बन जाता व इस प्रकार उसे लगभग 800 रु. प्रतिमाह वेतन की नुकसान हुआ। प्रार्थना की गयी कि कर्मकार को जिससे लाभ से वंचित रखा गया उसके उत्तराधिकारियों को दिलाया जाये।

प्रार्थी की ओर से जवाब में प्रारंभिक प्रार्थना की गयी कि कर्मकार की मृत्यु होने के कारण बैंक व कर्मकार के मध्य कोई संबंध नहीं रहों, इस कारण मामला विचार योग्य नहीं रह जाता। कर्मकार की मृत्यु तक पैनल के अनुसार क्रम संख्या 49 तक की ही सी. टी. ओ. के पद पर नियुक्ति की गयी थी। यदि यूनिशन के दावे को स्वीकार भी कर लिया जाये तो कर्मकार का नाम क्रम संख्या 55 पर आता है व बैंक ने अब तक क्रम संख्या 53 तक की ही सी. टी. ओ. की नियुक्ति दी है। यदि कर्मकार जोड़ित भी होता तो भी वह सी. टी. ओ. नहीं बन पाता। उससे कमिष्ठ किसी को नियुक्ति (लाभ) नहीं दिया गया है व उसे कोई हानि नहीं हुई है। यह भी उल्लेख किया गया कि समझौता दिनांक 29-3-94 में दिये गये निर्देशों के अनुसार दिनांक 20-7-97 की लिखित परीक्षा में सफल 105 व्यक्तियों को दिनांक 1-1-97 की प्राथमिकता अंकों के आधार पर एक पैनल बनाया गया जो तीन साल के लिए था। पैनल, परीक्षा वर्ष सम्मिलित करते हुए दिनांक 31-12-99 तक प्रभावी था, प्रार्थी के द्वारा कर्मकार के तीन अंक प्राथमिकता अंकों में दिनांक 1-7-97 को जोड़े जाने की मांग को तर्कहीन हाने का उल्लेख किया। परिपत्र संख्या 1116 केवल एडिप्ट टेस्ट के लिए बुलाये जाने के लिए ही संभव है न कि पैनल बनने के बाद के लिए। पैनल बनाये जाने के पश्चात् यदि कोई अभ्यर्थी कोई योग्यता प्राप्त करता है तो उसका प्रभाव पैनल पर नहीं पड़ता, जैसा कि कार्यालय के द्वारा स्पष्टीकरण दिया गया है। ये भी उल्लेख किया गया कि सभी सफल परीक्षार्थियों ने दिनांक 1-1-98 को सर्विस की अवधि के लिए 1-1 प्राथमिक अंक प्राप्त कर लिये थे व अन्य कुछ अभ्यर्थियों ने जो कर्मकार से वरिष्ठता क्रम में ऊपर थे, ने भी शैक्षणिक योग्यता के आधार पर 1 या 2 प्राथमिकता अंक अर्जित कर लिए थे। कर्म के खण्डानुसार जवाब में उल्लेख किया गया कि परिपत्र दिनांक 6-6-90 कम्प्यूटर ऑपरेटर के विशेष भत्ते वाले पदों पर लागू नहीं होता। परिपत्र संख्या 1116 का उदाहरण समझौता

1-11-88 की शर्त संख्या 3 से यों शर्त नहीं निकाला जाना चाहिये कि वरिष्ठता सूची का निर्धारण प्रत्येक वर्ष की 1 जनवरी को किया जाना है। उनका तर्क है कि परिपक्व दिनांक 6-6-90 कम्प्यूटर ऑपरेटर के चयन हेतु तैयार लागू नहीं होता। उनका तर्क है कि कर्मकार के द्वारा सई, 1997 में सी ए आई आई बी की परीक्षा उत्तीर्ण करने पर उसके दो शक प्राथमिकता सूची जो कि 1-1-97 को तैयार की गयी थी, को नहीं जोड़ा जाना समझौता दिनांक 29-3-94 व 1-11-88 के विरुद्ध नहीं है। उनका यह भी तर्क है कि प्रार्थी की मृत्यु तक केवल क्रम संख्या 49 कम्प्यूटर ऑपरेटर के पद पर नियुक्तियाँ हुई। अतः, कर्मकार अपने मृत्यु तक कम्प्यूटर ऑपरेटर नहीं बन सकता था। उनका यह भी तर्क है कि कर्मकार के द्वारा 1-1-98 से 4-5-99 तक स्थापना कार्य करने के आधार पर विशेष भत्तों का सुगमता किया गया है जिसका विवरण एम. एन. कामजीवाल के शपथ पत्र के साथ संलग्नक में प्रस्तुत किया गया है। समझौता दिनांक 29-3-94 की शर्तों, जो कि कम्प्यूटर ऑपरेटर के चयन की प्रक्रिया में संबंधित है, का उल्लेख करना उचित होगा जो कि निम्न प्रकार है :

TERMS OF SETTLEMENT

1. All permanent ALPM Operators (excluding, stand by ALPM Operators) as on the date of this Settlement will be posted as Computer Operators. These postings will be made taking town as a unit on the basis of their date of posting as ALPM Operator as and when the vacancies of Computer Operators arises.

2. In case of same date of posting as ALPM Operator their seniority will be determined in terms of the procedure laid down in the Settlement dated 1-11-88.

3. If all the ALPM Operators are not absorbed as Computer Operators in terms of Clauses 1 & 2 above, they will be kept in a panel till such time the panel is exhausted.

4. In addition, all willing confirmed employees possessing minimum educational qualification having at least 4 years service in the clerical cadre will be eligible to apply for selection as Computer Operators.

5. For the purpose of selection under Clause 4 above, the respective Zonal Offices will invite applications from the eligible employees in the town/city where the posts of Computer Operator exist or are likely to arise.

6. The applications received will be arranged in the order of inter-se-seniority determined in terms of procedure laid down in the Settlement dated 1-11-88. Out of the applications, so arranged, eligible candidates equal in five times the number of vacancies, will be called for an aptitude test.

7. Only such employees who obtain "A" and "B" grades in the aptitude test shall be treated as having qualified the test.

8. The list of employees qualifying the aptitude test will be arranged according to these inter-se-seniority. The candidates equivalent to the number of posts of Computer Operators will be posted as such and the remaining employees and exceeding twice the number of vacancies of Computer Operators will be kept in a panel. From this panel, the candidates equal to the number of vacancies of Computer Operators will be posted as Standby Computer Operator; an equal number of selected candidates will be empanelled. This panel including Standby Computer Operators will be valid for posting as Computer Operators for a period of 3 years including the year in which the panel is drawn. The permanent ALPM Operators will, however, get preference over Standby Computer Operators for posting as Permanent Computer Operators.

9. In case of refusal to accept posting as Computer Operator, the Clerical employees including ALPM Operators will be debarred from posting as well as working in stop gap arrangement as Computer Operators for one year from the date of refusal.

10. Clerical employees (including ALPM Operators) considered for posting as Computer Operators or Standby Computer Operators will be given training as considered appropriate by the bank.

11. Employees except ALPM Operators posted as Computer Operators and not found suitable for the job will be reverted back to their original position within 30 days from the date of such posting. Similarly the Computer Operators except ALPM Operators will also have the option to seek reversion to their original post within 30 days from the date of such posting. Those, who seek reversion, will also be debarred as provided in Clause 9 above.

12. An employee seeking reversion after 30 days from the date of posting as Computer Operator will be reverted as Clerk-cum-... And will also be debarred as provided in Clause 9 above. In that event, he will have to forego the special allowance, if any, being drawn by him before his posting as Computer Operator.

13. In case of absence of a permanent Computer Operator due to leave etc., the seniormost Standby Computer Operator (Seniority determined as per Clauses 1 & 2 above) will be allowed to work as Computer Operator. In case of non-availability of any Standby Computer Operator and/or empanelled Computer Operator, the senior most willing Clerk in the branch will be allowed to work a Computer Operator.

The Standby Computer Operators and the employees working in such stop gap arrangement will be entitled to prorata special allowance as admissible to Computer Operators for the number of days they actually work on computers.

14. In case any Standby Computer Operator refuses to work in the stop gap arrangement of Computer Operator, the seniormost willing Clerk in the line as well as from working as Computer Operator in stop gap arrangement for a period of one year.

15. In case of vacancies of Computer Operators, arising due to any reason (promotion, transfer, retirement, death etc.) permanent ALPM Operators and the Standby Computer Operator(s) in the town/city in the order of seniority, shall be given posting/offer for permanent posting as Computer Operator and in the resultant vacancy of Standby Computer Operator, the eligible Clerk from the panel in the order of seniority, shall be posted at the branch as Standby Computer Operator.

16. The Computer Operators shall be entitled for special allowance and other related benefits as provided for in the industry-level Settlement dated 29th October, 1993.

17. In addition to their duties as Computer Operators, the Computer Operators shall also be required to perform Clerical duties and when required by the bank. The duties of Computer Operators will also be interchangeable inter-se-irrespective of the jobs being performed by them.

18. Hours of work of Computer Operators including those, who work in place of Computer Operators in stop gap arrangements, can be staggered at the discretion of the Management in terms of the provisions of the Bipartite Settlements.

19. The existing permanent ALPM Operators shall continue to draw the special allowance of Rs. 350 p.m. till such time they are not given the duties/responsibilities of Computer Operators in pursuance of the industry-level Settlement dated 29th October, 1993 and the provisions, if any, made there under.

20. Wherever existing ALPMs have been upgraded in terms of the provisions of industry-wise Settlement dated 29-10-93 by upgrading the configuration beyond 256 kbs. (RAM), by increasing the number of accounts or by increasing the number of vouchers, the Operators shall be eligible for the allowance of Rs. 410 per month out of which an amount of Rs. 369 shall rank as "pay" for the purpose of superannuating benefits, as laid down the industry-wise Settlement dt. 29-10-93 w.e.f. the date of such upgradation.

समझौता दिनांक 1-11-88 जो कि विशेष सहायकों के रूप में लिपिकों की तैनाती और संबद्ध मामलों की कार्य-प्रणाली और नीति के संबंध में है कि जर्न संख्या 3 निम्न प्रकार है :

“प्राथमिकता सूची —

प्रत्येक वर्ष 1 जनवरी को मैनेजमेंट द्वारा ग्रुप/क्षेत्रवार प्राथमिकता सूची तैयार की जाएगी। प्राथमिकता सूची तैयार करने के मानदण्ड इस प्रकार हैं :—

(अ) सेवा की अवधि —

(क) बैंक में लिपिकीय संवर्ग में प्राप्तिपत्र के रूप में नियुक्ति की तारीख से प्रत्येक पूर्ण वर्ष की सेवा के लिए एक अंक दिया जाएगा जिसके अधिकतम 25 अंक होंगे।

(ख) 31-1-1950 के बाद आरम्भिक उच्च श्रेणी की राशि और/अथवा प्रदान की गयी अतिरिक्त वेतनवृद्धियों की राशि उस समय देय सामान्य वेतनवृद्धि की दर में लगाकर अंको से परिवर्तित की जाएगी (अंकों को छोड़ दिया जाएगा)।

(ग) भूतपूर्व हिन्दुस्तान कमर्शियल बैंक लिमिटेड के कर्मचारियों के मामले में 31-12-1989 तक भूतपूर्व हिन्दुस्तान कमर्शियल बैंक में पिछली सेवा के लाभ की गणना के लिए हिन्दुस्तान कमर्शियल बैंक से 1.5 वर्ष की सेवा पंजाब नेशनल बैंक में एक वर्ष की सेवा के बराबर होगी। सेवा की गणना 1.5 वर्ष की सेवा के पूरे ब्लॉक के आधार पर की जानी है और उसका अर्थ यदि कोई हो, उसे छोड़ दिया जाना है। विशेष सहायक के रूप में तैनाती के लिए पालना का निर्वाण करने के उद्देश्य से वर्कमैन की

पंजाब नेशनल बैंक में वर्कमैन के रूप में की गयी आर्थिक-विकास सेवा की अवधि में भूतपूर्व कर्मस्थल बैंक में उपर्युक्त बताए अनुसार की गई। गणना को जोड़ा जाता है। 1-1-1990 से इस पद्धति का लागू होना समाप्त हो जाएगा और भूतपूर्व हिन्दुस्तान कर्मस्थल बैंक के वर्कमैन विशेष सहायक के रूप में तैनाती के उद्देश्य से पिछली सेवा का पूरा लाभ प्राप्त कर सकेंगे।

(घ) तदर्थ सामूहिक वेतन वृद्धियों अथवा अच्छे कार्यों के अलावा वेतनवृद्धियों को छोड़ दिया जाता है।

(ङ) अनुशामनिक कार्रवाई के परिणामस्वरूप स्थायी रूप से रोकी गयी प्रत्येक वेतनवृद्धि के लिए एक अंक काटा जाता है। ऐसी स्थिति में जब वेतनवृद्धि/वेतनवृद्धियों जिन्हें सीमित अवधि के लिए रोका गया हो, प्राथमिकता अंक केवल उक्त अवधि के लिए काटा जाएगा और जब वेतनवृद्धि वापस मिल जाए तो उक्त वेतनवृद्धि से संबंधित प्राथमिकता अंक फिर लगा दिया जाएगा।

(च) बिना वेतन का अवकाश केवल ऐसे मामलों में सेवा की कुल अवधि में से घटाया जायेगा जहां वेतनवृद्धियां बिना वेतन के अवकाश की ऐसी अवधि के लिए आगे बढ़ायी गयी हों।

(ब) शैक्षणिक और अन्य योग्यताएं—

- | | |
|--|-------|
| (1) स्नातक | 2 अंक |
| (2) स्नातकोत्तर | 1 अंक |
| (3) विधि में डिग्री | 1 अंक |
| (4) गी ए आई आई बी (प्रथम भाग) | 2 अंक |
| (5) सी ए आई आई बी (द्वितीय भाग) | 2 अंक |
| (6) स्नातक अथवा स्नातकोत्तर परीक्षा में कॉमर्स | 1 अंक |
| (7) आई सी डब्ल्यू ए/सी ए | 1 अंक |

(क) किन्हीं संख्या के विषयों में स्नातकोत्तर डिग्री के लिए केवल एक अंक होगा। परन्तु बिजनेस एडमिनिस्ट्रेशन की डिग्री के लिए एक अतिरिक्त अंक होगा।

(ख) बी ए और बी ए (कॉमर्स) एक समान है अर्थात् बी ए (कामर्स) बी कॉम के बराबर नहीं है।

(ग) प्राथमिकता अंकों के समान होने पर अधिक सेवा वाले कर्मचारी को वरिष्ठ माना जाता है।

(घ) प्राथमिकता अंकों और सेवा अवधि की समानता के मामले में उच्च शैक्षणिक योग्यता वाले कर्मचारी को प्राथमिकता सूची में उच्च रैंक पर माना जाता है। शैक्षणिक योग्यता में समानता होने पर पिछले बोर्ड/विश्वविद्यालय की परीक्षा में प्राप्त डिवीजन/अंकों को वरिष्ठता निर्धारित करने के लिए आधार माना जाता है।

(स) ऊपर दिए 'अ' और 'ब' के अन्तर्गत बताए अनुसार प्राथमिकता अंकों का निर्धारण प्रत्येक वर्ष पहली जनवरी को किया जाना है।

(द) ऊपर द्वारा 'अ' और 'ब' के अन्तर्गत कुल अंकों के आधार पर क्षेत्र/समूहवार कुल प्राथमिकता सूची प्रत्येक वर्ष पहली जनवरी को तैयार की जानी है। प्रत्येक क्षेत्र/समूह में विशेष सहायकों की संभावित गिनतियों में 3 गुना प्राथमिकता सूची में उच्चतम स्थान प्राप्त कर्मचारियों की सूची संबंधित क्षेत्र की शाखाओं में परिचालित की जानी है। प्राथमिकता सूची में पड़े जाने के विरुद्ध कर्मचारियों को अपने आरोप प्रस्तुत करने के लिए यदि कोई हो, 15 दिन का समय दिया जाएगा। उसके पश्चात् आरोपों पर विचार किया जाएगा और शुद्धिपत्र भी, यदि कोई हो, परिचालित किया जाएगा और संशोधित सूची को, यदि कोई हो अंतिम माना जाएगा।

परिपत्र दिनांक 6-6-90 जो कि विशेष भत्ता वाले पदों के भरे जाने के संबंध में है, की खंड संख्या 1 और 2 निम्न प्रकार है :—

"1. Your attention is invited to our aforesaid Circular Letters, advising therein the details for filling up the Posts carrying special allowance.

2. The matter has been further discussed in the Central IRM Meeting held at ours on 22nd and 23rd May., 1990, and it has been decided that :

—Priority/seniority list in Clerical and subordinate cadre as on 1st January of every year may be prepared latest by 31st March of the Calendar year.

—Consequent upon preparation of priority/seniority list, vacancies of posts carrying special allowance may be filled up immediately but not later than 6 weeks of occurrence of the vacancy.

—Whenever vacancy of post carrying special allowance arises, the seniority of employees may be considered as on the date of occurrence of vacancy and not on the date of filling up the vacancy.

It is further clarified that the posting of Spl.I Assistants may be done in accordance with the settlement dt. 1-11-1988, circulated vide FD Cir. No. 1116 dt. 28-11-88."

समझौता दिनांक 29-3-94 की शर्त संख्या 6 में कम्प्यूटर ऑपरेटर के स्थान हेतु प्राप्त किये गये प्रार्थना पत्रों को समझौता दिनांक 1-11-88 के अनुसार तैयार की गई प्राथमिकता सूची बताये जाने के आधार पर जमाने के बारे में व उक्त प्रार्थना पत्रों में संशोधित पत्रों के पांच गुणा अग्रस्थितियों को, जो

कि अवेक्षित योग्यता रखते हों, एण्ट्रिड्यूड टेस्ट हेतु बुलाये जाने के बारे में उल्लेख है। खण्ड संख्या 7 के अनुसार एण्ट्रिड्यूड टेस्ट में ए. अथवा बी ग्रेड प्राप्त करने पर एण्ट्रिड्यूड टेस्ट में सफल अभ्यर्थियों की सूची प्राथमिकता के आधार पर बनायी जायेगी। उक्त सूची में से कम्प्यूटर ऑपरेटर के रिक्त पदों के बराबर नियुक्ति दे दी जायेगी व रिक्तियों के दूगुने तक अभ्यर्थियों को पैन्ल में रखा जायेगा, जिनमें से कम्प्यूटर ऑपरेटर के रिक्त पदों की संख्या के बराबर स्टेण्ड बाई कम्प्यूटर ऑपरेटर पदस्थापित किये जाएंगे व उसी संख्या में पैन्ल बनाया जायेगा। स्टेण्ड बाई कम्प्यूटर ऑपरेटर के चयन व पदस्थापन हेतु 3 वर्ष तक उग वर्ष को सम्मिलित करते हुए जिसमें की पैन्ल तैयार किया गया है पैन्ल बैक रहेगा। समझौता दिनांक 29-3-94 में ऐसा कहीं भी उल्लेख नहीं है कि कम्प्यूटर ऑपरेटर के चयन हेतु पैन्ल प्रत्येक वर्ष की 1 जनवरी को बनाया जाएगा। समझौता दि. 1-11-88 जो कि विधेय सहायकों के रूप में लिपिकों के चयन से संबंधित है कि शर्त संख्या 3 के अनुरूप प्रत्येक वर्ष 1 जनवरी को ग्रुप/क्षेत्रवार प्राथमिकता सूची तैयार किये जाने के बारे में उल्लेख है, जिसके मापदण्ड प्राथमिकता सूची बनाये जाने के बारे में दिये गये हैं। उक्त समझौते की शर्त संख्या 3 जो कि प्राथमिकता सूची के मापदण्ड के बारे में है केवल वही कम्प्यूटर ऑपरेटर के पैन्ल हेतु अभ्यर्थियों की वरिष्ठता सूची बनाये जाने से संबंधित है। समझौता दिनांक 29-3-94 के अनुसार कम्प्यूटर ऑपरेटर के चयन हेतु पैन्ल कम्बा/गहर जहां कि कम्प्यूटर ऑपरेटर का पद अस्तित्व में हो अथवा होने की संभावना हो, के आधार पर बनाया जाता है, जब कि समझौता दिनांक 1-11-88 के आधार पर प्राथमिकता सूची ग्रुप/क्षेत्रवार के आधार पर प्रत्येक वर्ष 1 जनवरी को बनाये जाने का प्रावधान है। उक्त समझौते में यह भी प्रावधान है कि प्राथमिकता अंक प्रत्येक वर्ष की 1 जनवरी को निर्धारित किये जाएंगे। समझौता दिनांक 29-3-94 में प्राथमिकता सूची प्रत्येक वर्ष की 1 जनवरी को बनाए जाने के बारे में प्रावधान नहीं है। यदि प्राथमिकता सूची प्रत्येक वर्ष 1 जनवरी को बनायी जाये तो इसका परिणाम यह होगा कि पैन्ल तीन वर्ष तक अस्तित्व में रहेगा ही नहीं, क्योंकि 3 वर्ष के समय के बीच ऐसे कई अभ्यर्थी हो सकते हैं जिन्होंने अतिरिक्त योग्यता प्राप्त कर ली हो। इस प्रकार मेरी राय में समझौता दिनांक 1-11-88 के उक्त प्रावधान से यह आशय नहीं निकाला जा सकता कि समझौता दिनांक 29-3-94 के अनुसार बनाये गये पैन्ल में प्रत्येक वर्ष परिवर्तन 1 जनवरी को किया जायेगा। परिपत्र दिनांक 6-6-90 विशेष भर्ता वाले पदों को भरे जाने के संबंध में है जो कि सामान्य परिपत्र है। कम्प्यूटर ऑपरेटर के चयन हेतु प्राथमिकता सूची किस आधार पर तैयार की जायेगी, इस बाबत उल्लेख है, तो उक्त परिपत्र

दिनांक 6-6-90 उक्त मामले में लागू नहीं होता। यह भी उल्लेखनाय है कि परिपत्र में ही स्पष्ट किया गया है कि स्पेशल आरस्टैंट के पदों पर पदस्थापना परिपत्र दिनांक 1-11-88 के अनुसार की जायेगी। इस प्रकार एक बार पैन्ल बनाये जाने के पश्चात यदि कोई अभ्यर्थी अतिरिक्त योग्यता प्राप्त कर लेता है तो उसके प्राथमिकता अंक समझौता दिनांक 29-3-94 के अनुसार नहीं जोड़े जाएंगे।

प्राथी के विद्वान् प्रतिनिधि द्वारा नोट दिया गया है कि राजेश शर्मा का कम्प्यूटर पैन्ल में क्रमांक 52 से 80 ए. व. सुभाष शर्मा का बरोयता क्रम 74 से 60 ए. किया गया। इस बारे में विपक्षी की ओर से रामबाबु शर्मा द्वारा स्पष्टीकरण दिया गया कि राजेश शर्मा के सी ए आई आई बी में परीक्षा उत्तीर्ण करने का प्रमाण पत्र वापस ले लिया था, इसलिए उसका वरिष्ठता क्रमांक बदला गया व सुभाष शर्मा की वरिष्ठता क्रमांक गणना करने के समय उसके सेवावधि के आधार पर 13 अंक जोड़े, जबकि 14 अंक जोड़े जाने चाहिये थे व सी ए आई आई बी में परीक्षा उत्तीर्ण करने के अंक नहीं जोड़े गये व दो अंक जोड़ने पर उसका क्रमांक 74 के स्थान पर 60 ए. हो गया जिसमें एण्ट्रिड्यूड टेस्ट से पहले सुधार कर लिया गया था। जिन परिस्थितियों में उक्त अभ्यर्थियों का क्रमांक बदला गया उनकी तुलना कर्मकार की ओर से की गयी मांग से नहीं की जा सकती। त्रुटि वगैरह अंकों में गणना करने पर अथवा जिस प्रमाण पत्र के आधार पर अंक दिये गये हों, उस प्रमाण पत्र के वापस लिये जाने पर वरिष्ठता क्रमांक बदलने पर यह नहीं कहा जा सकता कि कम्प्यूटर ऑपरेटर के चयन हेतु पैन्ल में परिवर्तन प्रत्येक वर्ष की 1 जनवरी को किया जा सकता है।

उक्त विवेचना के आधार पर कर्मकार (सुभाष चन्द्र धीपा) के द्वारा सी ए आई आई बी परीक्षा उत्तीर्ण करने के अंकों को विपक्षी द्वारा पैन्ल द्वारा बनाये जाने के पश्चात न जोड़ा जाना उचित है व कर्मकार के उत्तराधिकारी कोई सहायता प्राप्त करने के अधिकारी नहीं हैं।

पंचाट की प्रतिनिधियां केन्द्रीय सरकार को अधिनियम 1947 की धारा 17 ए की उपधारा (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जाये।

ह./- अपठनीय

पीठासीन अधिकारी

नई दिल्ली, 4 जुलाई, 2001

का.आ. 1837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/4/94-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1837.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relaxation to the management of B.C.C.L. and their workman, which was received by the Central Government on 2-7-2001

[No. L-20012/4/94-IR (C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT

Shri B. Biswas

Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) of the I.D. Act, 1947

REFERENCE NO. 6 OF 1995

Parties : Employers in relation to the
management of Tetulmari Colliery of
M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D.K. Verma,
Advocate

On behalf of the employers : Shri H. Nath,
Advocate

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 21st June, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d)

of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (4)/94-I.R (Coal-I), dated, the 20th February, 1995.

SCHEDULE

“Whether the action of the management of Tetulmari Colliery of M/s. BCCL in dismissing Sri Anugrah Narayan. Ex-Welder w.c.f. 14-2-90 is justified? If not to what relief the workman is entitled?”

2. The case of the concerned workman in brief is as follows :—

The concerned workman in his W S. submitted that he was a permanent workman at Tetulmari colliery to the satisfaction of all concern. It has been submitted by the concerned workman that the management issued a chargesheet against the concerned workman with the allegation for leaving the working place without information or sufficient reason instead of noting his attendance and that he was doing so only for the interest of his private business during duty hours. Against that chargesheet the concerned workman submitted his reply but being dissatisfied with the reply given by the concerned workman a domestic enquiry was held against the concerned workman by the Enquiry Officer by order of the management and the E.O. after completing that enquiry found him guilty and on the basis of that report the management dismissed him from service with effect from 14-2-90. It has been alleged by the concerned workman that the management illegally and arbitrarily and violating the principles of natural justice without any reason chargesheeted him and thereafter relying on domestic enquiry report dismissed him from his service though he did not commit any mischief as alleged by the management. Accordingly the concerned workman has prayed for passing an Award for his reinstatement with full back wages and other benefits with retrospective effect.

3. The management on the contrary after filing W S -cum-rejoinder has denied all claims and allegations which the concerned workman asserted in his W S. It has been submitted by the management that the concerned workman was Welder Helper at Tetulmari workshop at Sijua Area. He was chargesheeted on 3-8-89 for his misconduct as per clauses 17(i)(f)(p) of the Model Standing Orders applicable to the concerned workman and he was directed to show cause against chargesheet issued to him. As the reply was not considered satisfactory Shri R.N.S. Yadav, Sr. P.O. Tetulmari colliery was appointed as E.O. to hold enquiry into the chargesheet. During enquiry the concerned workman participated. After completion of the enquiry the enquiry officer submitted his report holding the concerned workman guilty of the misconduct as per clauses 17(i)(f)(p) of the Model Standing Order and

accordingly he was dismissed from service with effect from 14-2-90. The management further submitted that considering the seriousness of the charges order of dismissal was fully justified and it was so done for the interest of maintaining discipline under the Mines of M/s. BCCL. The management submitted that the industrial dispute which the concerned workman raised by way of reference finds no basis at all. Accordingly the management has prayed for passing an Award to the effect that the action of the management of Tetulmari Colliery of M/s. BCCL in dismissing the concerned workman with effect from 14-2-90 was justified and for which the concerned workman is not entitled to any relief.

4. The points for decision in this reference is whether the action of the management of Tetulmari Colliery of M/s. BCCL in dismissing Sri Anugrah Narayan, Ex-Welder w.c.f. 14-2-90 is justified and if not, to what relief the workman is entitled?

Decisions with reasons

5. There is no dispute to hold that the concerned workman was Welder Helper at Tetulmari colliery workshop of Sijua Area under M/s. BCCL. There is also no dispute to hold that for commission of misconduct according to clause 17(i)(f)(p) of the Model Standing Order a chargesheet was given to the concerned workman with direction to give its reply. It is admitted fact that the concerned workman against that chargesheet gave his reply but the management being dissatisfied with the reply given by the concerned workman ordered for a domestic enquiry and for that charges the management appointed Shri R.N.S. Yadav, Senior P.O., Tetulmari colliery as E.O. The domestic enquiry was held in presence of both sides and after completing the said enquiry the Enquiry Officer found the concerned workman guilty and as a result of which the management dismissed the concerned workman from his service with effect from 14-2-90. Being aggrieved by and dissatisfied with the order of dismissal passed by the management the concerned workman raised an industrial dispute which resulted reference to this Tribunal for adjudication.

6. Before taking up for final hearing a preliminary hearing was taken up as to the legality, validity, fairness and propriety of the domestic enquiry held by the E.O. By order No. 29 dt. 28-1-98 passed by this Tribunal it was held "Domestic enquiry be and is hereby treated as not fair and proper." Accordingly on the prayer of the management they were allowed to adduce evidence to substantiate the charge which was brought against the concerned workman. In course of evidence the chargesheet given to the concerned workman was marked as Ext. M-7. It is seen that the management has brought the charge against the concerned workman for his leaving the place of work without information or sufficient reason inspite of giving attendance. It has been further charged that the concerned workman during the period of his absence

was engaged in doing his private business ignoring his duty hours and for which the concerned workman has violated the provision of clause 17(i) (f)(p) of the Model Standing Order. Therefore, from the chargesheet it is clear that the concerned workman though used to mark his attendance in the Attendance register would leave the office without prior permission of the authority concerned or without giving any intimation for the interest of the colliery. The allegation which has been brought against the concerned workman is no doubt a serious one. Now let us consider how far the management has been able to establish the charge which has been brought against the concerned workman. The management in order to substantiate the charge has examined three witnesses namely MW-1, MW-2 and MW-3. From the MW-1 it transpires that in the year 1987 the concerned workman was on duty for 202 days while in the year 1989 he was on duty for 78 days. Copies of the attendance register during the period as mentioned above were marked as Ext. M-1 collectively. This witness during his evidence admitted that he was not aware if any chargesheet against the concerned workman was issued or not. MW-1 during his evidence disclosed that the concerned workman used to work under him for the period from 1987 to 1989 continuously. This witness disclosed that the concerned workman was not particular as well as regular in attending his duty. Accordingly he was served with a chargesheet for unauthorised absence from duty during the period from 24-9-88 to 3-2-89 and 29-7-89 to 23-8-89. MW-3 during his evidence did not disclose relating to the allegation which has been brought by the management. He only during his evidence disclosed that on one occasion the concerned workman was served with a chargesheet and he was found guilty during domestic enquiry and he was dismissed from service. Considering the evidence of MW-1 and MW-2 I do not find any bearing relating to the facts as disclosed in the chargesheet. It is the specific allegation that the concerned workman though used to attend the office would leave office to meet his personal business without giving any intimation or prior permission. The allegation which was brought against him is no doubt serious. Onus absolutely lies on the management to establish the charge and to establish the charge management relied on the evidence of MW-1 and MW-2 and MW-3. I have already discussed the evidence of these witnesses and from the evidences of these witnesses I have failed to find an iota of evidence relying on which the allegations which have been brought in the chargesheet against the concerned workman could be substantiated. Apart from the evidence of these the management also has failed to produce any such relevant paper to show that the concerned workman inspite of putting his attendance in the office Attendance Register used to leave the office unauthorisedly without giving any intimation to the authority concerned for the interest of his own private business. Therefore, considering all aspects carefully I find no hesitation to say that the management

has failed to establish the charge lamentably. I hold after careful consideration of the evidence on record that the management has illegally dismissed the concerned workman from his service violating the principles of natural justice and equity. In the result, the following Award is rendered:—

“The action of the management of Tetulmari Colliery of M/s. BCCL in dismissing Sri Anugrah Narayan, Ex-Welder w.e.f. 14-2-90 is not justified. Consequently, the concerned workman is entitled reinstatement to his original job with full back wages and other consequential benefits from the date of his dismissal to the date of his reinstatement.”

The management is therefore directed to implement the Award with payment of full back wages and other consequential benefits within three months from the date of publication of the Award.

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का.आ. 1838.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ.एन.जी.सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण गुवाहाटी (आसाम) के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/07/96-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1838.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Guwahati Assam as shown in the annexure in the Industrial dispute between the employers in relation to the management of O.N.G.C. and their workmen, which was received by the Central Government on 2-7-2001.

[No. L-20012/07/96-IR (C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL : GUWAHATI :
ASSAM.

REFERENCE NO. 1 (C) OF 1997.

PRESENT : Shri K. Sarma, LL.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute

BETWEEN :

The Management of O.N.G.C., Dhansiri Valley Project,
Jorhat.

-Vs-

Their workmen Shri Indreswar Saikia and 36 others.

Date of Award : 1-6-2001.

AWARD

This Industrial Dispute under section 10 of the I.D. Act has been referred to by the Govt. of India, Ministry of Labour, vide order No. L-20012/07/96-IR (Coal-I) dated 25-2-97 to adjudicate the dispute arising between the management of O.N.G.C. Dhansiri Valley Project, Jorhat and their workmen, Shri Indreswar Saikia and 36 others out of non-regularisation of their service and also for denying equal wages for work performed by them. The appropriate Govt. has framed the following issue to adjudicate the matter in controversy between the parties :

“Whether the action of the management of O.N.G.C., Dhansiri Valley Project, Jorhat in not regularising the services of Shri Indreswar Saikia and 36 others (as per list enclosed) and denying equal wages for the work is legal and justified ? If not, to what relief are these workmen entitled ?”

On receipt of the reference, this tribunal has registered this case and issued notices to both the parties calling upon them to file their written statements, addl. written statement and documents, if any, in response to which both the parties have appeared and filed their written statement, addl. written statement and documents in support of their respective claim.

Apart from the documentary evidence, both the parties have adduced oral evidence in support of their pleadings.

After completion of evidence, the learned advocates for both the parties have argued the case at length and also submitted their written arguments.

The fact of the case as is reflected from the materials on record is that altogether 264 workmen were engaged by the management of O.N.G.C. to work in the Dhansiri Valley Project at Jorhat since its inception. The workmen have alleged that they were engaged by the management directly for the purpose of doing some perennail nature of work such as Attendant, Motor Vehicle Driver, Generator Operator, Security Guards, Mechanical Helper, Electrical Supervisor, Khalasi, Helper, Typist, Plumber, Pump Operator, Sweeper Works, R/R Operator, Surveyor, Sanitary Cleaner etc. Although these workmen were engaged by the management directly on wages basis but, they are termed as contractual workers without existence

of any contract between management and any contractor. From the nature of job done by them and the control exercised by the management on them and the wages paid to them, the workmen, for all purpose have claimed themselves to be direct employee of the management at all material time. As the management has not regularised the service of total 264 workmen working in the Dhansiri Valley Project, the workmen forming an association under the name and style O.N.G.C. Dhansiri Valley Project Worker Association in 1986 have got it registered under the Trade Union Act and raised an industrial dispute in the year 1989 for regularisation of their service and said dispute has been referred by the appropriate Government to this tribunal for adjudication. This Tribunal has registered the Ref. No. 1(C)/89 and answered the reference in favour of workmen directing the management to regularise their services. The management has knocked the door of the Hon'ble High Court against the award of this tribunal and having been unsuccessful has ultimately moved the Hon'ble Supreme Court where they also become unsuccessful. The management, thereafter regularised the service of the workmen barring 37 who have raised the present industrial dispute. The management plea for non-regularisation of service of these 37 workmen is that their names have not been figured in original award and hence their service could not be regularised.

Out of 37 workers, in the list annexed with schedule of the reference, 3 against the serial No. 32, 33 and 37 left the service and 1 Raju Rao against serial No. 21 died during the pendency of the reference and hence these remains 33 workmen claiming the regularisation of their service in this reference. These 33 workmen are doing the similar nature of work with those of who had already been regularised by the management vide award passed by this tribunal in Ref. No. 1(C)/89 and they are doing similar nature of work with those of them as has already been mentioned herein above. These workmen claim in their written statement that they are never engaged by the contractor and are direct employees of the management having been direct control and supervision of the management and also paying remuneration to them directly by the management from their fund. Moreover, work done by them are perennial in nature and have been performing for 15 to 16 years, i.e. since inception of D.V.P. It is also contended that work done by them are also done by regular employee drawing handsome remuneration, but on the other hand, they have been deprived regular pay benefit entitled to them as per law.

The management, on the otherhand, has contended that the workmen are never direct employees of the management and have no direct relationship between the management and the workmen, but they are contract labour engaged through contractor and hence management is not liable for regularisation of their service. They have also denied the fact that workmen are doing the perennial nature

of work as claimed by them. According to the management, as the workmen are not direct employees of the management, their claim for regularisation is not tenable in law.

I have carefully gone through the entire material on record including the pleading of the parties. But it is to be noted that in the pleading, management has not denied that 37 workers raising the industrial dispute were not the part of the 264 workmen who had originally raised the industrial dispute decided by this tribunal in their favour vide Ref. No. 1(C)/89 which was ultimately upheld by the Apex Court. But their plea is that they could not be regularised as per award passed in aforesaid reference because their names were not mentioned in the said award.

In course of argument, the learned advocate for the management has submitted that if the workmen have to be regularised, how many percentage of the workmen has to be regularised has to be looked into by the tribunal. Because the management has adduced the evidence of M.W.2 who claimed to be a man-power expert undertaking survey as to requirement of man-power at D.V.P. His 2nd submission is that if the workmen are to be regularised in their services, they are to be regularised following the procedure prescribed in that behalf.

Although, the management has raised the plea in their written statement that the workmen were not the direct employee of the management, but a contractual workmen, but said plea is not tenable in law because in earlier reference being Ref. No. 1(C)/89 which has been raised by total 264 workmen including percent 37, although whose name, according to management had not been figured in the award, workmen have already been held by the tribunal not to be contractual worker, but direct employees of the management and said award was ultimately upheld by Appex Court. In view of this, I do not see any reason to hold that the workmen are contractual worker, and not the direct employees of the management. Moreover, from the perusal of the entire material on record I find that the management has not established who is the contractor supplying the workmen to the management with licence under the provision of Contract Labour Abolition and Regulation Act, 1971. It goes without saying that to established the fact of contract labour the management must established that they have license to engage contract labour and the contractor also supplying the workmen has licence under the provision of the same act and vice-versa. In the instant case, the management has not established that they have licence to engage contract labour and contractor supplying the labour has also license. Without existence any of the aforesaid facts, it can be held that the plea of contract labour raised by the management is nothing but shame or camouflage in order to deprive the poor workers from getting the financial benefit who

are making profit to the company doing hard work in their own soil. Moreover, from the nature of the work done by the workmen it is found that the works done by the workmen are perennial in nature and also perform for the benefit of the management. It has been laid down by the Apex Court in *Hussain Bhai, Calcutta Vs. The Alath Factory Thezhilali Union, Kozhikode and others (1978) 4 SCC P. 25* as follows :

“The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw materials was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This contention of circumstances is conclusive that the workmen were the workmen of the petitioner.”

In *Secv. Harayana Electricity Board Vs. Suresh and others AIR 1999 SC P. 1161 Apex Court* has as follows:

“(E) Contract Labour (Regulation & Abolition) Act (37 of 1970) S. 10—Contract Labour—Absorption in service—Electricity Board—Work of keeping plants and station clean and hygienic awarded to contractor—Work not of seasonal nature—Contract itself stipulating number of employees to be engaged by Contractor—Overall control workings of contract labour including administrative control remaining with the Board—Board neither registered as principal employer nor contractor was licensed contractor—contract system was thus a mere camouflage which could be easily pierced and employer employee relationship between Board and employees easily visualised—Employees who have worked for more than 240 days can not therefore be denied absorption.”

In view of aforesaid principle of law inunciated by Apex Court and different High Courts of the Country and also fact and circumstances of the case which I have already discussed herein above, I have no hesitation to hold that the workmen are not the contractual workers but also direct employee of the management.

So far as the plea of manpower survey raised by the management on the basis of evidence of M.W. 2 is concerned, I find that the evidence of P.W. 2 had not given any impression on us as to whether he is really a manpower expert or not having specialisation on the subject. From his evidence, it is established that he is simply an Asstt. Executive Engineer of O.N.G.C. It is not established that he has any special qualification on the subject. Moreover,

he has not submitted any survey report prepared by him nor any paper showing that he was conducting manpower survey. From perusal of his evidence, I do not find any reliable material on record to hold that he has conducted any manpower survey at D.V.P. as to requirement of manpower there and prepared any report showing requirement of less number of manpower due to diminishing business protencially. In view of this, I am not inclined to put any emphasis on evidence of P.W. 2 and to act upon it. The management has further submitted that if the workmen are to be regularised these are to be regularised as per procedure of the compnay. But it is surprising to note that services of the workmen have been exploited by the company by paying less than prescribed wages for a period of 15/16 years without following any procedure. But in case of regularisation if any procedure is to be followed it is upto the company. What procedure is to be followed by the company it is upto them, but fact remains that 33 workers raising this Industrial Dispute working for 15/16 years doing perennial nature of work must be regularised within a period of one year from the date of this award.

In view of my aforesaid discussion on material on record, I hereby hold that the management is not justified in not regularising the service of the 33 workmen and also by not paying the equal wages to them with those of regular workmen. Accordingly, management is directed to regularise the services of the aforesaid 33 workmen within the period of one year from the date of this award by paying all financial benefit entitled to them under rule. If all of them cannot be regularised within the aforesaid period of one year, they should be paid equal wages with those of regular employees and other financial benefit entitled to them till regularisation.

With this direction reference is answered in favour of the workmen. Prepare an award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का.आ. 1839.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/141/91-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1839. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of TISCO and their workman, which was received by the Central Government on 2-7-2001.

[No. L-20012/141/91-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

Shri B. Biswas,

Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947.

REFERENCE No. 153 of 1991.

Parties : Employers in relation to the management of Jamadoba Colliery of M/s. Tisco. Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee,
Secretary, Bihar
Colliery Kamgar
Union.

On behalf of the employers : Shri B. Joshi,
Advocate.

State : Jharkhand : Industry : Coal.

Dated Dhanbad, the 19th June, 2001.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/141/91-I.R. (Coal-I), dated, the Nil.

SCHEDULE

"Whether the action of the management of M/s. TISCO, Ltd., P.O. Jamadoba, Distt. Dhanbad in dismissing Shri Rajendra Singh, Driver T. No. 2305 is justified? If not, to what relief the workman is entitled?"

2. The case of the workman/Union as disclosed in their W.S. is as follows :—

The concerned workman Shri Rajendra Singh had been working as permanent driver since long under the

management. The concerned workman was issued with a chargesheet allegedly dt. 15-5-79 for the alleged incident which took place on 14-5-79 by the Acting Workshop Manager. The concerned workman submitted his reply to the chargesheet and the management being not satisfied with the reply conducted departmental enquiry for the alleged incident. It is further alleged by the concerned workman that the Enquiry Officer conducted/completed the enquiry violating the principles of natural justice. Thereafter the management agreeing with the findings of the Enquiry Officer dismissed the concerned workman from his service with effect from 8-10-1979. Thereafter the concerned workman represented before the management several times but without any effect. Seeing no other alternative the union of the concerned workman raised an industrial dispute before the ALC(C), Dhanbad which resulted reference to this Tribunal for adjudication. The workman/union has prayed before this Tribunal to pass an Award in their favour holding that the dismissal of the concerned workman was unjustified and directing the management to reinstate the concerned workman with full back wages.

3. On the contrary the management after filing W. S. has denied all the claims and allegation which the **concerned workman** asserted in his W.S. It has been disclosed by the **management** that the concerned workman Rajendra Singh was employed as driver with effect from 1-9-68. He was dismissed from company's service with effect from 8-10-79 on account of proved misconduct of serious in nature. The management submitted that their action in dismissing the concerned workman with effect from 8-10-79 is legal *bona fide* and justified and in accordance to the principles of natural justice. It has been submitted that the concerned workman was on B. Shift duty on 24-5-79 at the Coal Washing plant of Jamadoba. The concerned workman was deputed to operate Dumper No. BHG 8290 for transporting rejections from the washery to the rejection dump. It has been submitted that in the process of washing the best quality used for metallurgical purpose is obtained and inferior quality coal used for burning purpose is separated and deposited in the meddling bunker. The rejection consisting of shale/stone etc. are separated from the meddling and the same are deposited in the rejection bunker. The concerned workman was deputed to transport rejection from the rejection Bunker to unload the same at the specified place. On 24-5-79 at about 10.45 P.M. it was detected that the concerned workman loaded meddling from the Meddling bunker of the Coal Washery plant into Dumper No. BHG-8290 under his charge and attempted to move out of the colliery through No. 4 incline gate situated in front of the Manager's Office at Jamadoba Colliery and in that process the Watchman suspected him and signalled him to stop the dumper but instead of stopping the concerned workman attempted to run away

with the meddling loaded in the Dumper. The watchman on duty over telephone informed the watchman at the Central Workshop gate to stop the dumper as in his opinion the Dumper was loaded with coal or meddling, surreptitiously and was moving out of the colliery. The watchman Shri Kamal Deo Singh stationed at the workshop attempted to stop the Dumper at the gate but the concerned workman speeded away with the dumper without caring the signal given by Kamaldeo Singh to stop his dumper. Security Inspectors Shri Ajoy Kumar and A.M. Khan got information about the same from the security control room and they followed the dumper in question on Jeep No. BHG 239. While following the dumper Shri Ajay Kumar and A.M. Khan found that the dumper taking turn towards 3 Pit was proceeding towards 3 Pits Creche House gate after unloading contents at the fire area reject heap. Both the Security Inspectors and their staff examined the contents unloaded from the dumper and found that it was 3/4 tonnes of meddling. Thereafter the said Ajay Kumar and A.M. Khan went to 3 Pit gate with the said dumper proceeded towards washery. After reaching washery they found the dumper there without its driver, the concerned workman. They came to know that the concerned workman left the Dumper handing over the key to the Khalasi of that dumper.

4. It has been submitted by the management that the concerned workman was not authorised to load meddling into his dumper and that he had no gate pass to carry meddling through incline gate as well as the workshop gate. The management submitted if the watchman and the security persons would not have been alerted the concerned workman had the scope to take away the meddling out of the colliery for his personal gain. It has been further alleged that the concerned workman acted in furtherance of his dishonest intention to gain benefit by causing loss of property to the management and thereby he committed misconduct in connection with the Co's property and business. The concerned workman was charged under clause 19(2) of the Certified S.O. for commission of misconduct or theft fraud or dishonesty in connection with the company's property and business and a chargesheet dt. 15-5-79 was issued to the concerned workman. The concerned workman submitted his reply denying the allegation charged against him. Thereafter a domestic enquiry was held in presence of the concerned workman and after enquiry the concerned workman was found guilty and accordingly he was dismissed from service with effect from 27-9/4-10-79. Accordingly the management has prayed for passing an Award in their favour holding the action of the management in dismissing the concerned workman was legal and justified and that the concerned workman is not entitled to any relief.

5. The points for decision in this reference are whether the action of the management of M/s. TISCO. Ltd., P.O. Jamadoba, Distt. Dhanbad in dismissing Shri

Rajendra Singh Driver, T. No. 2305 is justified and if not to what relief the concerned workman is entitled?

DECISIONS WITH REASONS

6. There is no dispute to hold that the concerned workman was driver under the management. There is also no dispute to hold that on 24-5-79 the concerned workman was on B. Shift duty commenced from 3 P.M. to 11 P.M. and during B Shift duty he was entrusted to operate Dumper BHW-8290 used for transporting rejection from the washery to rejection dump. The allegation which has been brought against the concerned workman is that on 24-5-79 at about 10.15 P.M. at Night in course of his duty he was found to have moved through No. 4 incline gate with his dumper BHW-8290. As the watchman posted at No. 4 incline gate suspected him he signalled him to stop the dumper but ignoring that signal the concerned workman moved towards the Central Workshop gate. The watchman on duty over telephone informed the Watchman posted at the Central Workshop gate to stop the dumper at the gate. The Watchman Shri Kamaldeo Singh stationed there took an attempt to stop the said dumper but the concerned workman left the spot accelerating the speed of the dumper and moved towards 3 Pit. On receiving information the Security Inspector Ajay Kumar and A.M. Khan followed the dumper and came to Pit No. 3. As soon as they reached there they saw the concerned workman to move towards 3 Pit creche house gate with his dumper and after unloading contents at the fire area rejection left that place handling over key of the dumper to its Khalasi. It has been submitted by the management that on that day i.e. on 24-5-79 the concerned workman was entrusted to operate the said dumper for transporting rejection from the washery to rejection dump. They submitted that meddling which are used for burning purpose were not entrusted for handling by the concerned workman on that night during his B. shift duty. During inspection it was found that the concerned workman unloaded meddling there from his dumper at fire reject heap instead of unloaded rejection from the washery. It has been alleged that with dishonest intention for his personal gain the concerned workman instead of carrying rejection carried meddling with a view to take the same out from the colliery surreptitiously. Accordingly chargesheet was given to him under Clause 19.2 of the Certified S.O. and thereafter a domestic enquiry was held and he was found guilty and dismissed from service. Thereafter by way of reference in the present industrial dispute was raised by the concerned workman and the case was referred to this Tribunal for hearing. Before taking up final hearing, preliminary hearing was taken up to consider if the domestic enquiry held by the E.O. was fair, proper and in accordance with the principles of natural justice. The said hearing was taken up by my Predecessor-in-office in presence of both sides and by Order No. 19 dt. 28-4-93 my predecessor-in-office held that the domestic enquiry held against the concerned workman by the management

was fair, proper and in accordance with the principles of natural justice. Thereafter the case was taken up for final hearing. In course of final hearing I considered the domestic enquiry papers held by the Enquiry Officer. I have carefully considered all the relevant papers of the domestic enquiry including the evidence adduced by the management. Considering evidence it transpires clearly that the concerned workman at about 10.15 P.M. on 24-5-79 while he was on B shift duty was found moving towards No. 4 Incline gate situated in front of the Manager's office at Jamadoba colliery and thereafter ignoring the signal of that watchman of that get moved towards the Central Workshop getting then towards 3 Pit. Thereafter he unloaded the contents of the Dumper near 3 Pit fire area. On spot enquiry it was found that meddling weighing about 3 to 4 tonnes were unloaded there by the concerned workman from his dumper though he was not authorised to carry meddling. He was actually entrusted to carry rejections. In course of domestic enquiry the concerned workman took the plea that the management has brought false charge against him. But during cross-examination of the witness the concerned workman has failed to high light any material point relying on which there is scope to say that the chargesheet which was given to him was false. No evidence is also forthcoming before the Tribunal that those witnesses made false evidence against him with some ulterior motive. There is no dispute to hold that on 24-5-79 he was on B shift duty from 11 P.M. The incident in question took place at 10.15 P.M. It is the specific allegation that the concerned workman handling over Key of the dumper to its khalasi left the place. The dumper was found lying at 3 Pit Creche House gate after unloading the contents in the fire area rejection. No evidence is forthcoming before the Court that after B shift duty the concerned workman left handing over the said dumper to his incharge. No satisfactory explanation is forthcoming how that Dumper was found lying at a place which is not to be considered as the place for handling over the dumper. No explanation is also forthcoming why the concerned workman left the place after handing over key to the Khalasi of the said dumper. No explanation is also forthcoming how 3/4 tonnes of meddling were found lying near the 3 Pit Fire area after being unloaded from the said dumper. The witnesses examined during the domestic enquiry were the eye witnesses to the incident in question. There is no reason on the part of the concerned workman to move with his dumper surreptitiously from gate to gate. No explanation is forthcoming why he did not stop his dumper receiving signal from the watchman. Considering all aspects it is clear that instead of rejection concerned was carrying meddling outside the gate. I have considered the reports submitted by the E.O. and I did not find any illegality or discrepancy in the report submitted by the E.O. I find that relying on the evidence the E.O. came to the

conclusion that the concerned workman committed mischief which comes under the purview of clause 19.2 of the Certified Standing Order. It is seen that the management thereafter dismissed the concerned workman from his service with effect from 8-10-79. After careful consideration of all the facts and circumstances it is seen that absolutely with dishonest intention the concerned workman took his attempt to remove 3/4 tonnes of meddling in his dumper outside the colliery of the management for his personal gain with view to incur loss to the management. This act on the part of the concerned workman appear to be very serious in nature. The management dismissed him from his services as they lost all faith on him. Learned Advocate for the concerned workman in course of hearing submitted that the management has taken drastic step which could be avoided. On the contrary learned Advocate for the management submitted that it because very much difficult on the part of the management to entrust any job to the concerned workman if it is found that he at all cannot be relied upon for his misconduct and illegal motive. It is seen that concerned workman was found guilty of his serious misconduct which comes within the purview of clause 19 (2) of the Certified Standing Order. There is reason to believe that on the part of the management it was not possible to trust this concerned workman in future. As such it also could not be possible on the part of the management to entrust any job to him considering his act. Accordingly if all these aspects are taken into consideration there is reason to believe that the management did not commit any illegality in dismissing the concerned workman from his service. As such I do not find any reason to interfere with the decision of the management. In the result, the following Award is rendered :—

“The action of the management of M/s. TISCO. LTD. P.O. Jamadoba, Distt. Dhanbad in dismissing Shri Rajendra Singh, Driver, T.No. 2305 is justified consequently, the concerned workman is not entitled to any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का०आ० 1840.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-01 को प्राप्त हुआ था।

[सं. एल-20012/226/92-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1840.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 2-7-2001.

[No. L-20012/226/92-IR(C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, (NO.2) AT DHANBAD

PRESENT

Shri B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 166 of 1993

PARTIES : Employers in relation to the
management of Kendwadih
Colliery of M/s. BCCL and their
workmen.

APPEARANCES :

On behalf of the workmen : Shri S. Bose, Advocate.

On behalf of the employers : Shri Harihar Nath,
Advocate.

State : Jharkhand : Industry : Coal.

Dated, Dhanbad, the 21st June, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/226/92-IR (Coal-I), dated, the 21st September, 1993.

SCHEDULE

“Whether the action of the management of P.B. Area of M/s. B.C.C.L. in denying regularisation to Shri Idan Mian, Kudus Mia, Rameshwar Rajwar, Shyam Das Harijan, Nand Lal Yadav, Manohar Paswan, Shri Bhagi Singh, Lokman Mian Kallimuddin Khan, Shri Dahu Mian, Ghanashyam Mian, Shoharab Mian and Abdul Mian is justified? If not, to what relief the concerned workmen are entitled?”

2. The case of the concerned workmen as per W.S. in brief is as follows :—

The concerned workmen submitted that they were workmen in Pit No. 2 and Incline Nos. 11 and 12 at Bansdeopur colliery under M/s. BCCL since 1997. After working there for some years they were directed to work in Pit No. 3 and 4 of Kendwadih Colliery. They worked till 1992 continuously. It has been submitted that the management in order to avoid regularisation of their services treated them as cooperative workers and used to pay wages and allowances through one of the concerned workmen i.e. Shri Nand Lal Yadav. The said Nand Lal Yadav one of the cooperative workers used to maintain their attendance and receive payment for and on behalf of them. The attendance register was duly checked by the Union representative by Mr. R. L. Singh. Thereafter the union of the concerned workmen orally and also in writing made a representation to the colliery management to absorb the concerned workmen in regular services. The management though assured the union, did not fulfil their commitment. As a result, when they started agitating the management stopped them from their work in the year 1982 and for which they are sitting idle. The workmen submitted that while they worked under the sirdari system or cooperative system they were given the benefit of medical treatment in the hospital of the colliery for working underground their attendance was marked in Form C Register. They were also provided with Cap Lamp before going to the underground work for duty and the same was also duly noted in the Cap Lamp Issue register. The workmen submitted that in course of their employment they have completed more than 190 days as underground worker and even 240 days in every calendar year and in support of their claim they relied on the documents available to them. The management also in course of their service provided other facilities including supply of coal. The concerned workmen further submitted that as they agitated over abolition of sirdari system and cooperative system, the management in consultation with the union decided to regularise their services under the management subject to their appearance before the Selection Committee for physical test and job test. They further submitted that it was the moral duty of the management to respect that settlement entered into between the management and the different unions and to give chances to them for permanent service under the management but their claim was totally denied by the management. Accordingly, the concerned workmen raised this industrial dispute by way of reference with prayer for regulation of their services under the management.

3. The management on the contrary after filing W.S. cum-rejoinder denied all the claims and allegations which the concerned workmen asserted in their W. S. It has been submitted by the management that the Organising Secretary, Jharkhand Colliery Mazdoor Union vide letter dt. 14-1-92 to the ALC(C), Dhanbad raised industrial dispute

for regularisation of the services of the concerned workmen. In the said petition they did not give full particulars of the alleged concerned workmen and for which the management submitted that reference is not maintainable in the eye of law. Apart from this fact the management submitted that there was no relationship of employer and employee between the concerned workmen and the management at any point of time. It has been further submitted that the same dispute was earlier raised by the National Coal Workers Congress before the ALC(C), Dhanbad. The ALC(C), Dhanbad after going through the W.S. of the union and the management and after hearing both the parties came to the conclusion that the demand of the union was fabricated and for which the case was closed. In spite of closing the case Jharkhand Colliery Mazdoor Union has again by a petition dt. 14-1-92 raised the same dispute which is not maintainable in the eye of law. The management submitted that the alleged concerned workmen were never employed by the management at any point of time either through contractor or directly. Accordingly the management have prayed for passing an Award to the effect that the action of the management of P.B. Area of M/s. BCCL in denying the regularisation to the concerned workman was justified and the concerned workmen are not entitled to any relief.

4. The points for decisions in this reference are as follows :—

“Whether the action of the management of P.B. Area of M/s. B.C.C.L. in denying regularisation to Shri Idan Mian, Kudus Mia, Rameshwar Rajwar, Shyam Das Harijan, Nand Lal Yadav, Manohar Paswan, Shri Bhagi Singh, Lokman Mian, Kallimuddin Khan, Shri Dahu Mian, Ghanashyam Mian, Shoharab Mian and Abdul Mian is justified? If not, to what relief the concerned workmen are entitled?”

Findings with Reasons

5. The management in order to rebut the claim of the concerned workmen has examined three witnesses in all. On the contrary on behalf of the concerned workmen they examined two witnesses in order to substantiate their claim. When it is the specific contention of the concerned workmen that they initially were appointed as underground workmen in pit No. 2 and incline No. 11 and 12 in Basudeopur Colliery in the year 1977 the management categorically denied any employer and employee relationship in between them. It has been categorically submitted by the concerned workmen that in the year 1977 they were first engaged as underground workmen in Pit No. 2 and incline No. 11 and 12 of Basudeopur Colliery and thereafter they were asked to work at Pit No. 3 and 4 of Kendwadih Colliery till 1982 when they were retrenched by the management. It has been further disclosed that actually they worked under the management as cooperative workers and payment was made through one Nand Lal Yadav who was one of the

workers of the management. They disclosed that during the period of their services they regularly maintained their attendance and received payment on the basis of the said attendance. The said attendance register was checked and verified by the Union leader by Shri R. L. Singh. Even in course of their engagement they not only received wages from the concerned management through Nand Lal Yadav as cooperative workers but also used to receive their other benefits for their subsistence including medical facilities. WW-1 who was one of the concerned workman during his evidence admitted that though they used to work under the management at Kendwadih Colliery. They did not receive any letter of appointment from the management. This witness also during his cross-examination admitted that he had no proof in writing to show that he had his service in the said colliery. This witness also during his cross-examination admitted that he had no paper to show that they were in continuous service in the said colliery. This witness during his evidence has failed to produce the I.D. Card and any other relevant papers to justify his claim about his service in the colliery mentioned above under the management. He disclosed that they used to receive payment from Khajanchi Babu of the said colliery and the said payment was received by Nand Lal Yadav. This witness further disclosed that after a lapse of 10 years they raised the dispute because of the fact that Nand Lal Yadav, their Munshi fled away with all connected papers relating to their service. WW-2 who is Union leader of Jharkhand Mazdoor Union during his evidence disclosed that the concerned workman being employees of the management used to work in incline No. 11 and 12 of Basudeopur Colliery and thereafter they join at Kendwadih colliery. All of them worked there as Genl. Mazdoor and in 1982 the management stopped them from work. This witness disclosed that the attendance of the concerned workman used to be maintained in the colliery and their number of attendance during one calendar year was more than 240 days. In spite of such continuous service this witness alleged that the management did not regularize their services and for which they have made the reference raising industrial dispute. Both WW-1 and WW-2 asserted that they were the employees of the management at Kendwadih Colliery but in support of their claim they have failed to produce a single scrap of paper to justify their claim. WW-2 during evidence submitted a list of the concerned workmen and their photographs which during his evidence were marked as Ext. W-1 and W-2. I have considered their list as well as the photograph but the said list does not expose clearly if it was issued by the management or if by the regular workmen under the management concerned till 1982. MW-2 and MW-3 during their evidence supporting the case of the management submitted that they never saw the concerned workmen to work under the management excepting one Nand Lal Yadav. Accordingly they denied the fact that the concerned workmen worked there for more than 240 days within one calendar year. During evidence

of MW-2 relied on certain documents were marked as Ext. M-1 to M-3. The document marked as Ext. M-1 is a petition filed by the Jharkhand Colliery Mazdoor Union addressed to the ALC(C), Dhanbad. By that petition they have raised dispute about the concerned workmen for its reconciliation. The document marked as Ext. M-2 is a notice issued by the ALC(C) for taking up hearing in the matter of reconciliation in view of the petition filed by the Union (Ext.M-1). The document marked as Ext.M-3 is an information submitted by the Kendwadih Colliery where in it has clearly been reported that the concerned workmen have never worked at Kendwadih Colliery. Further it has been informed that a similar case being Case No. 1/379/91/E-3 dt. 23-8-91 was started but the same has duly been closed. Considering the submission of the management it transpires that over self same issue Jharkhand Colliery Mazdoor Union vide letter dt. 14-1-92 raised a dispute before the ALC(C), Dhanbad. The management further submitted that after hearing both side and also considering the W.S. of the union and the management the ALC(C), Dhanbad came to the conclusion that the demand of the union was a fabricated one and accordingly he closed the dispute. This contention which the management asserted in the W.S.-cum-rejoinder was not at all denied by the concerned workmen either by any documentary evidence or by oral evidence. On the contrary from the documents marked as Ext. M-3 I find support in respect of the claim of the management over the dispute raised previously by National Coal Worker's Congress over the self same issue. Learned Advocate for the management further submitted that after a lapse of 10 years from the alleged year of retrenchment the concerned workmen raised this industrial dispute by way of making reference and for which the same is barred by the law of limitations. In support of the claim learned Advocate for the management relied on the decision reported in 2000 Lab I.C. Page 703 Supreme Court and in F.J.R. Vol. 79 page 458 of Kerala High Court. Considering the submission of the learned Advocate for the management it is seen that prior to raising this industrial dispute over the self same issue another dispute was raised by another union and the said dispute was closed by the ALC(C) Dhanbad after hearing both sides. It is further seen that the instant industrial dispute was raised by the union after a lapse of 10 years. It is the contention of the management that never there was any employer and employee relationship in between the management and the concerned workmen. I have carefully considered all relevant papers in the record and also the evidence adduced by both sides. The concerned workmen in course of their evidence have failed to produce a single scrap of paper to show that they have worked at Kendwadih Colliery for a continuous period and also worked for more than 240 days in a calendar year. It has been disclosed by the concerned workmen that they not only used to draw wages through Nand Lal Yadav as cooperative worker but also used to enjoy other benefits from the management including medical

facilities. The concerned workmen in course of hearing has failed to produce a single scrap of paper to this effect. As such just relying on oral submission I find it very difficult to accept the claim of the concerned workmen that they continuously worked at Kendwadih Colliery upto 1982 till the date when their services were ceased by the order of the management. No satisfactory explanation is also forthcoming on the part of the concerned workmen as to why they have made such long delay i.e. for a period of 10 years to raise such industrial dispute. In the decision reported in 2000 Lab. I.C. page 703 their Lordships of the Hon'ble Apex Court in para-6 of the judgement held that Law does not prescribe any time limit for the appropriate Govt. to exercise its power under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in rational manner..... In Para-7 of the said decision their Lordships of the Apex Court held that the purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purposes of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question. In the decision reported in F.J.R. 458 Vol. 79 his Lordship of Kerala High Court held that even though there is no period of limitation under Section 33C(2) the second respondent was justified in dismissing the stale claims of the petitions. If stale claims are allowed, it would lead to undesirable results including financial anarchy and chaos in the industrial field. Unless there is a satisfactory explanation for the delay, the Labour Court is not expected to entertain petitions especially when it would have far reaching pecuniary consequences on the employers. In the present case the claims are made after a lapse of time. Whether a claim has become stale or not depends upon facts of each case and hard and fast rules cannot be laid down one way or the other. Therefore, considering the said two decisions it is clear that before making long delay in raising industrial dispute the workmen concerned cannot avoid responsibility to explain reason for such delay. Liberty cannot be given to raise industrial dispute in a whimsical manner according to the choice of the concerned workmen. Here in the instant case it is clear not only over the self same issue a previous industrial dispute was raised before the ALC(C) and disposed of but the concerned workmen waited for more than 10 years to raise further industrial dispute with a view to get their relief. In spite of raising so the concerned workmen did not consider necessary to assign the causes of such long delay in this regard. Therefore by efflux of time I consider that the said industrial dispute which has been raised by the concerned workmen has lost its weight apart from the fact that they have failed to substantiate their claim that they worked at Kendwadih Colliery for a considerable period till they were asked to stop their work by the management.

6. As such after careful consideration of all the facts and circumstances of the case the concerned workmen have failed to substantiate their claim with reasonable certainty and for which in view of my discussions made above they are not entitled to get any relief which they have prayed. Accordingly the following Award is rendered :—

"The action of the management of P.B. Area of M/s. B.C.C.L. in denying regularisation to Shri Idan Mia, Kudus Mian, Rameshwar Rajwar Shyam Das Harijan, Nand Lal Yadav, Manohar Paswan, Shri Bhagi Singh, Lokman Mina, Kallimuddin Khan, Shri Dahu Mian, Ghanashyam Mian, Shoharb Mian and Abdul Mian is justified. Consequently the concerned workmen are not entitled to any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का०आ०. 1841.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/305/92-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1841.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 2-7-2001.

[No. L-20012/305/92-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

* PRESENT

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 189 of 1993

PARTIES : Employers in relation to the management
of Teturia Colliery of M/s. BCCL and their workmen.

APPEARANCES:

On behalf of the workmen : Shri D. Mukherjee,
Advocate.

On behalf of the employers : Shri B. Joshi, Advocate.

State : Jharkhand

Industry : Coal.

Dated, Dhanbad, the 21st June, 2001.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(305)/92-IR(Coal-I), dated, the 5th/9th November, 1993.

SCHEDULE

"Whether the action of the General Manager, Govindpur Area of M/s. B.C.C.L., P.O. Sonardih, Dt. Dhanbad in denying to accept the date of birth as recorded in Form B register of South Govindpur Colliery in respect of Shri Nand Lal Hazam, Ex-Attendance Clerk is justified? If not, what relief the workmen is entitled to?"

2. The case of the workmen in brief is as follows :—

The concerned workmen in his W.S. submitted that he was appointed in Jalgora Colliery in the year 1970 prior to the date of Nationalisation of the collieries and at the time of his appointment in the said colliery his date of birth in Form B Register was recorded as 21-11-1938. Thereafter the concerned workmen was transferred to South Govindpur Colliery and also his date of birth in the Form B Register was recorded as 21-11-1938. From South Govindpur Colliery subsequently he was transferred to Teturiya Colliery in the year 1973 but the management at that time illegally and arbitrarily recorded his date of birth as 29-7-1931. Accordingly he made representation before the management for correction of his date of birth in the Form B Register which was wrongly and illegally recorded but the management did not pay any heed to his appeal. The concerned workmen submitted that at the time he also submitted his School leaving Certificate before the management where in his date of birth was also recorded as 21-11-1938. As the appeal which the concerned workmen made before the management did not yield any result, finding no other alternative way he raised an industrial dispute before the ALC(C), Dhanbad challenging the illegal and arbitrary recording of age and his premature superannuation. He submitted that the management instead of correcting his age according to the school leaving certificate referred him before the alleged medical board in violation of the direction of the Medical Board and the Medical Board assessed his age in violation of the direction of Medical Jurisprudence. He submitted that the Medical Board had determined his age without conducting any ossification test and for which it had no basis to accept.

He submitted that his actual date of birth is 21-11-38 but ignoring his date of birth which he relied on the management superannuated him prematurely relying on the wrong report of the Medical Board. Accordingly the concerned workman has prayed for passing an Award directing the management to accept his date of birth as 21-11-38 and to reinstate him with full back wages.

3. The management on the contrary after filing W.S.-cum-rejoinder denied all claims and allegation which the concerned workman asserted in his W.S. It has been submitted by the management that the concerned workman Nand Lal Hajam was an Attendance Clerk at Teturiya Colliery. In the year 1986 he made a representation before the management to the effect that the age col. in the Form B register was kept blank as he failed to produce any document in proof of his age at the time of his employment. He prayed for assessment of his age by the Medical Board and to get the same entered in the Form B Register. Accordingly the concerned workman was referred to the Medical Board and the Medical Board after examining him assessed his age as 55 years on 29-7-86 i.e. on the date of his medical examination by the Medical Board. The concerned workman was duly informed about the position by the Medical Board and he accepted the same and put his signature in token of acceptance of the age 55 as on 27-7-86. The concerned workman was superannuated with effect from 29-7-91 as on that he completed his age of 60 years. After retirement the concerned workman approached this sponsoring union for raising industrial dispute over his age and as a result this reference has come into existence. The management submitted that the age column of the Form B Register of South Govindpur Colliery as well as Teturiya Colliery were remained blank till his age was assessed by the Medical Board and was entered in the Form B Register of Teturiya Colliery. The concerned workman at the Teturiya Colliery worked from 1973 as Attendance Clerk and he was very much aware that the age/date of birth in the age column of Form B Register is required to be filled up but knowing fully well of the fact the concerned workman remained silent. But subsequently he submitted his application for assessment of his age with the help of Medical Board. It has been further submitted by the management that there was no scope on the part of the concerned workman to submit School Leaving Certificate if he was in possession of the same but he did not do so. There was no reason at all to ignore his prayer about recording his date of birth as on 21-11-38 if he was able to produce any cogent paper before the management. The management submitted that with some ulterior motive the concerned workman after getting his retirement has raised this dispute illegally. Accordingly the management has prayed for passing an Award holding that the concerned workman is not entitled to get any relief.

4. The points for consideration in this reference are whether the action of the General Manager, Govindpur Area

of M/s. BCCL, P.O. Sonardih, Dt. Dhanbad in denying to accept the date of birth as recorded in Form 'B' Register of South Govindpur Colliery in respect of Shri Nand Lal Hajam, Ex. Attendance Clerk is justified? If not, what relief, the workman is entitled to?

Findings with Reasons

The management in order to substantiate their claim has examined one witness. The concerned workman on the contrary did not examine any witness to substantiate his claim. It is admitted fact that the concerned workman before his superannuation from service was an employee of Teturiya Colliery. His designation was Attendance Clerk. According to the submission of the concerned workman prior to this transfer to Teturiya Colliery he was posted at South Govindpur Colliery and prior to that he was posted at Jealgora Colliery. His initial appointment at Jealgora Colliery was in the year 1970. His contention is that at the time of his initial appointment in the Form B Register his date of birth was recorded as 21-11-38 when he was transferred to South Govindpur Colliery in the Form B Register his date of birth was also recorded as 21-11-38 but while he was posted at Teturiya Colliery his date of birth was arbitrarily and illegally recorded as 29-7-31 instead of 21-11-38. In support of his claim the concerned workman relied on Form A of the C.M.P.F. which during evidence was marked as Ext. W-1. It has been submitted by the concerned workman that ignoring his claim the management referred him to the Medical Board and the Medical Board without making his ossification test arbitrarily assessed his age as 55 years on 29-7-86. Accordingly the concerned workman submitted that the Medical Board illegally assessed his age and it had no basis to assess his age in that way. On the contrary the management during hearing submitted that neither at South Govindpur Colliery nor at Teturiya Colliery where the concerned workman was posted his age Col. in Form B Register filled up. Accordingly the concerned workman submitted an application in the year 1986 with prayer for assessment of his age through Medical Board. On the basis of his representation the management referred him before the Medical Board on 29-7-86 and on that day he was examined by the Medical Board and after examination his age was assessed as 55 years on 29-7-86. Accordingly the concerned workman was informed about the position by the Medical Board itself and he accepting the same put his signature on the official paper. Thereafter the concerned workman did not raise any dispute over his age and accordingly as per assessment of the age of the concerned workman by the Medical Board he was superannuated on 29-7-91 at the age of 60 years. Learned Advocate for the management submitted that during that period till the date of his superannuation the concerned workman did not raise any dispute about his age assessed by the Medical Board. He raised the dispute only after his superannuation with some ulterior motive. During cross-examination of MW-1 he admitted that in case of transfer

from one colliery to other colliery L.P.C. is issued wherein the date of birth of the concerned workman is recorded. Last Pay Certificate gives full service particulars of the concerned workman. MW-1 during his evidence admitted that he did not consult the L.P.C. of the concerned workman prior to his appearance before this Tribunal. This witness also during cross-examination admitted that Form A is required to be filled up for opening C.M.P.F. account of a worker wherein particulars of the concerned workmen are inserted. Photo copy of the Form A during evidence was marked as Ext. W-1. It is seen from the submission of the learned Advocate of the concerned workman that the concerned workman not only relied on Form A of the C.M.P.F. but also relied on his School Leaving Certificate. According to Form A of C.M.P.F. it transpires that his date of birth was 15-8-1940. This certificate was filled up by the concerned workman on 24-1-61. From the W.S. submitted by the concerned workman it transpires that he joined at Jealgora Colliery in the year 1970. Therefore the concerned workman was very much aware about his age and inspite of his personal knowledge he claimed that his date of birth in Form B Register was recorded as 21-11-1938. No satisfactory explanation is forthcoming before the Tribunal why he concealed his exact date of birth which was recorded in Form A of CMPF. As such it is clear that the concerned workman did not come with clean hand. Learned Advocate for the concerned workman challenged the Medical Board report of the concerned workman. Medical Board's report relating to assessment of age of the concerned workman during evidence was marked as Ext. M-1. It has been submitted that illegally and arbitrarily the Medical Board assessed his age without his ossification test. Learned Advocate for the workman relied on a decision reported on 1996(2) BJLR 1492 in this regard. In the said decision Their Lordships held that in absence of ossification test date of birth in Medical Examination is not reliable. Referring this decision Learned Advocate submitted that assessment of age by the Medical Board in respect of the concerned workman without holding ossification test cannot be accepted at all. On the contrary learned Advocate for the management relying on the decisions reported in S.C.L.J. page 1464 and decisions reported in 2001 Lab I.C. page 28 Supreme Court, submitted that it is not at all necessary to make ossification test of the concerned workman for the assessment of his age. In the decision reported in S.C.L.J. page 1464 Their Lordships of the Hon'ble Apex Court held that medical opinion of the Medical Board cannot be brushed aside. In the decision reported in 2001 Lab I.C. page 28 Their Lordships of the Apex Court held that date of birth as determined by the Medical Board on considering evidence available with the management and in accordance with the requirement of Medical Jurisprudence are final. Their Lordships of the Apex Court in the decisions referred to above held that the Medical Examination of the concerned workman by the Medical Board should be held in compliance to Medical

Jurisprudence. No allegation is forthcoming before the Tribunal that the Medical Board assessed the age of the concerned workman without complying the provisions of the Medical Jurisprudence. As such relying on the decisions referred to above I hold that there is no reason to disbelieve the Medical Board in the matter of assessment of age of the concerned workman. Particular when it is seen that the concerned workman signed the required form issued by the Medical Board and accepted the assessment of his age. It is further seen that the concerned workman did not raise any dispute about assessment of age till the date of superannuation. He only raised the dispute after his superannuation. The decisions reported in S.C.L.J. page 1464 is clear on this point. In the said decision Their Lordships held that the workman did not challenge the opinion of the Medical Board relating to the assessment of his age and he only raised dispute after retirement without any justification. The concerned workman submitted that in the Form B Register his date of birth was recorded as 29-7-31 wrongly and without any basis. I do not concede to the submission of the concerned workman because of the fact that the said date of birth was recorded as per report of the Medical Board and that has duly been noted in the appropriate Col. Therefore it is clear that column of **age in the Form B Register** of the concerned workman before his medical test by the Medical Board remained blank. Accordingly there is no scope to say that the management committed any misdeed.

6. Onus lies on the concerned workman to establish that assessment of age by the Medical Board was done illegally and arbitrarily. He did not over this issue made any representation before the management immediately after his examination by the Medical Board. No explanation is forthcoming before the Tribunal from the side of the concerned workman and the concerned workman remained silent till the date of his retirement. The concerned workman also failed to produce any authentic paper to show that the assessment of the Medical Board relating to his age was absolutely wrong and cannot be relied on. As such after careful consideration of all facts and circumstances I hold that the concerned workman has failed to **establish** his claim beyond all reasonable doubt and for which I do not find any reason to consider that he is entitled to get any relief which he has prayed for. Accordingly the following award is rendered.

“The action of the General Manager, Govindpur Area of M/s. BCCL in denying to accept the date of birth as recorded in Form 'B' Register of South Govindpur Colliery in respect of Shri Nand Lal Hajam, Ext. Attd. Clerk is justified. The concerned workman is not entitled to any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का०आ०1842.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-01 को प्राप्त हुआ था।

[सं. एल-20012/314/90-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवसर सचिव

New Delhi the 4th July, 2001

S.O. 1842.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 2-7-01.

[No. L-20012/314/90-IR(C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947.

Reference No. 80 of 1991

PARTIES : Employers in relation to the
management of North Tisra
Colliery of M/s. BCCL and their
workmen.

APPEARANCES

On behalf of the workmen : Shri S. Bose, Advocate.

On behalf of the employers : Shri B. Joshi,
Advocate.

State : Jharkhand : Industry : Coal.

Dhanbad, the 19th June, 2001.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this

Tribunal for adjudication vide their Order No. L-20012/(314)/90-IR(Coal-I), dated, the 19th March, 1991.

SCHEDULE

"Whether the action of the management of North Tisra Colliery of M/s. B.C.C.L. in dismissing Shri Haradhan Singh Dumper Khalasi w.e.f. 30-9-85 is justified? If not, to what relief the concerned workmen are entitled?"

2. The case of the concerned workmen in brief is as follows:—

The concerned workman in his W.S. submitted that he was a Dumper Khalasi in North Tisra Colliery of M/s. BCCL Lodna Area. He submitted that over an allegation of meeting an accident in the said colliery the management issued a chargesheet against him on 25-5-85 on the ground of commission of misconduct under clause 18(i)(f)(I) and (q) of the Model Standing Order. He submitted that he made a reply to that chargesheet but the management being dissatisfied with the reply started a domestic enquiry and after completing that enquiry the E.O. found him guilty illegally and violating the principles of natural justice. The concerned workman further submitted that on the basis of that enquiry report the management dismissed him from service on 30-9-85. It has been submitted categorically by the concerned workman that the order of dismissal was illegal, improper and contrary to the principles of natural justice. Accordingly the concerned workman has prayed for passing necessary Award in his favour setting aside the order of dismissal passed by the management to reinstate him in his service with full back wages and other consequential benefits with retrospective effect.

3. The Management on the contrary after filing W.S.-cum-rejoinder denied all the claims and allegation which the concerned workman asserted in his W.S. It has been submitted by the management that due to unauthorised driving of Dumper No. BHG-3519 by the concerned workman during his second shift duty met with an accident at about 9.45 P.M. due to rash and negligent driving and as a result of which one work woman Jilpi Bourin sustained serious injuries to her person and ultimately succumbed to her injuries. It has been submitted by the management that the concerned workman had no legal authority to drive the vehicle in question but inspite of knowing this fact he unauthorisedly drove the vehicle and made accident in question for which a precious life was lost. Accordingly the management issued a chargesheet dt. 25-5-85 and thereafter started domestic enquiry on the basis of chargesheet given to the concerned workman in his presence. The E.O. after completing the enquiry found the concerned workman guilty and submitted his reply accordingly. The management thereafter dismissed the concerned workman from service with effect from 30-9-85. It has been submitted by the management that the action

taken by them in dismissing the concerned workman was legal, bonafide and justified, and also in accordance to the principle of natural justice. They further submitted that the concerned workman not only drove the vehicle without any authorisation received from the competent authority but also drove the vehicle rashly and negligently without due care and caution resulting cause of death of another work woman of their concern. Such callous and indifferent attitude on the part of the concerned workman could not be excused by the management and the management was compelled to take serious disciplinary action against him so as to deter other like-minded persons from unauthorisedly driving vehicle and causing accident to the persons working in the mine. Accordingly the management has prayed for passing an Award holding that the concerned workman is not entitled to any relief.

The points for decisions in this reference are whether the action of the management of North Tisra Colliery of M/s. BCCL in dismissing Shri Haradhan Singh, Dumper Khalasi w.c.f. 30-9-85 is justified and if not, to what relief the workman is entitled?

DECISIONS WITH REASONS

5. It is admitted fact that the concerned workman was Dumper Khalasi under the management. The instant reference came into existence in view of the dismissal order passed by the management against the concerned workman and that was as a result of domestic enquiry held by them over an accident met by him in discharge of his official duty. It is seen that over meeting accident by the concerned workman a chargesheet was issued against him by the management. Thereafter on the basis of the chargesheet a domestic enquiry was held against him. During domestic enquiry the E.O. examined several witnesses including the concerned workman. All the witnesses during their examination categorically disclosed that on the relevant date and time due to rash and negligent driving of the Dumper No. BHG 3519, co-worker woman named Jilpi Bourin was knocked down and for which she sustained serious injury to her person and ultimately succumbed to her injury. Even the E.O. recorded the statement of the concerned workman and the concerned workman during giving the statement admitted the incident in question. He further disclosed in his statement that under which circumstances he was compelled to drive the Dumper in question but to substantiate that claim the concerned workman has failed to adduce any further evidence. It is the specific allegation of the management that the concerned workman was not authorised to drive the Dumper and for which he was not also legally entitled to drive the vehicle in question but inspite of knowing his position the concerned workman did not hesitate to drive the vehicle and in course of driving the said Dumper knocked down on a lady worker. It is the specific allegation that due to rash and negligent driving of the vehicle in question the said accident took place.

Accordingly the E.O. found him guilty and submitted his report. The E.O. during the preliminary hearing was examined as MW-1. The Enquiry Officer in course of his evidence disclosed in details how he took up the enquiry in question and submitted his report. Vide Order No. 28 dt. 2-9-93 my predecessor-in-office held that the enquiry done by the Enquiry Officer as per order of the management in view of the chargesheet given to the concerned workman was fair, proper and in accordance with the principles of natural justice.

6. I have carefully considered all the relevant papers of domestic enquiry in course of final hearing. It transpires clearly from the statement of witnesses that the concerned workman was guilty for causing the said accident. In course of hearing learned Advocate for the concerned workman has failed to give any satisfactory explanation to the effect that the concerned workman had valid authority to drive the Dumper in question before meeting the said accident. Learned Advocate for the concerned workman has also failed to satisfy the Tribunal that the said accident was not occurred due to rash and negligent driving of the Dumper in question by him. In the W.S. concerned workman denied the fact about his involvement to drive the Dumper in question and also to meet accident as a result of which a valuable life was lost. The facts disclosed in the W.S. I consider has gone a far away from the facts disclosed by the concerned workman will he gave his statement before the Enquiry Officer. It is not the case of the concerned workman that he did not give any statement before the Enquiry Officer or signed any paper. As such in absence of cogent evidence I consider that the statement recorded by the Enquiry Officer was the statement of the concerned workman and subsequently with a view to get rid of the charge he took his attempt to deny the incident in question. After careful consideration of all facts and circumstances I hold that the concerned workman as actually involved in meeting the accident for his rash and negligent driving. I am also satisfied that the concerned workman had no legal authority to drive the Dumber in question. Now let us consider if the dismissal passed by the management is against the principles of natural justice and equity. The management in the W.S.-cum-rejoinder has categorically explained under which circumstances they were compelled to take serious decision. They have categorically disclosed that such order of dismissal was very much required with a view to give a warning to others not to take any attempt to drive the vehicles of the management illegally and unauthorisedly. It is seen that for whimsical driving of heavy vehicle like Dumper a precious life was lost and that was so done carelessly as the concerned workman failed to control that vehicle due to his rash and negligible driving. Therefore, I consider that the order of dismissal passed by the management in no circumstances can be said to be against any natural justice and equity. I further consider that the management in passing the order of dismissal did

not commit any illegality. In the result, I do not find any justification to interfere with the decision taken by the management for dismissal of the concerned workman from his service. Accordingly the following Award is rendered :—

“The action of the management of North Tisra Colliery of M/s BCCL in dismissing Shri Haradhan Singh Dumper Khalasi w.e.f. 30-9-85 is justified. Consequently, the concerned workman is not entitled to any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. आ. 1843.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/324/86-डी. III (ए)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S. O. 1843.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman. Which was received by the Central Government on 2-7-2001.

[No. L-20012/324/86-D. III (A)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Sri. B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

Reference No. 118 of 1987.

PARTIES: Employers in relation to the management of Nudkhurkee Colliery of M/s. B.C.C. Ltd. and their workmen.

APPEARANCES:

On behalf of the workman : None appear

On behalf of the employers : Shri B. Joshi, Advocate.

State : Jharkhand

Industry : Coal

Dhanbad, the 14th June, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (324)/86-D. III(A), dated, the 14th April, 1987.

SCHEDULE

“Whether the action of the management of Nudkhurkee Colliery of M/s. Bharat Coking Coal Limited, in denying employment to the dependent of Shri Narain Sao, Fitter as per Clause 10 4.3 of the National Coal Wage Agreement-III is justified? If not to what relief the workman is entitled?”

2. In this reference both the parties appeared and filed their respective W.S. and documents. Subsequently at the stage of oral evidence, learned Advocate for the management was present but no one appeared on the side of the workman. It reveals from the records that this reference is pending since 1987. It is of no use to drag the same for years together. Under such circumstances a ‘No dispute’ Award is rendered and the reference is disposed of on the basis of ‘No dispute’ Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 4 जुलाई, 2001

का. आ. 1844.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/337/94-आईआर(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S. O. 1844.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman. Which was received by the Central Government on 2-7-2001.

[No. L-20012/337/94-IR(C-F)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Sri. B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 110 of 1995

PARTIES: Employers in relation to the
management of M/s. Bhowra
Open Cast Project of M/s. B.C.C.
Ltd. and their workmen.

APPEARANCES:

On behalf of the workman : Shri B. N. Singh Secretary
National Coal Workers
Congress.

On behalf of the employers : Shri Harihar Nath,
Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 20th June, 2001

AWARD

The Govt. of India, Ministry of Labour, in exercise of
the powers conferred on them under Section 10(1)(d) of
the I.D. Act, 1947 has referred the following dispute to this
Tribunal for adjudication vide their Order No. L-20012 (337)/
94-I. R. (Coal-I), dated, the 30th August, 1995.

SCHEDULE

"Whether the action of the management of Bhowra(S)
Colliery of Bhowra Area of M/s. BCCL in
dismissing the services of Sri Anand Prasad
Baidyakar w.e.f. 8-11-93 is justified? If not, to
what relief the concerned workman is entitled?"

2. The case of the concerned workman in brief is as
follows :—

The concerned workman Anand Prasad Baidyakar
had been working as Register Keeper till 7-11-83 although
he was designated as permanent General Mazdoor under
the management. The concerned workman submitted that
as he approached the management for his regularisation as
Register Keeper, it created anguish in the management and
for which relation in between the management and him
became strain. In the midst of such development suddenly
the concerned workman was issued with a chargesheet dt.
8-11-93 with the allegation that he tore the page of Form C
Register in 'A' shift on 24-10-93 and this was seen by the
G.M. (C) and due to such action records of previous present

on time on the above date could not be available and that
his such action was gross misconduct as per Certified
Standing Order of the workmen of BCCL. Thereafter he
was suspended from his service and a domestic enquiry
was started. It has been submitted that the Enquiry Officer
after holding the said domestic enquiry illegally found him
guilty and thereafter on the basis of such observation of
the Enquiry Officer he was dismissed from service by the
management on and from 8-11-93. It has been submitted by
the concerned workman that the management illegally and
arbitrarily relying on the enquiry report of domestic enquiry
dismissed him from service. Accordingly the concerned
workman has prayed for reinstatement with continuity of
service and arrears of wages and other consequential
benefits for the period of idleness on account of his
dismissal.

3. The management on the contrary after filing W.S.-
cum-rejoinder has denied all the claims and the allegations
which the concerned workman asserted in his W.S. It has
been disclosed by the management that on 24-10-93 the
concerned workman was deployed in the colliery of the
management as Attendance Clerk in 'A' shift duty. In course
of inspection by G.M.(O) Bhowra Area on the above date
and shift he put his remark on the attendance register of
the employees and again after sometimes he asked the
concerned workman to produce the said register. At that
time he found that the original page in which Attendance
was marked are not available in the said Register and it was
torn off by the concerned workman with ill motive to hide
his deeds in the register. Accordingly a chargesheet was
given to the concerned workman under Section clauses
26:1:11 and 26:1:29 of the Certified Standing Order
applicable to the concerned workman for the charge of
fraud, dishonesty in connection with Company's business,
wilful falsification, destruction of the company's record.
Subsequently departmental enquiry was held wherein the
concerned workman was found guilty and accordingly he
was dismissed from his service with effect from 8-11-93.
The management submitted the dismissal of the concerned
workman was fully justified in view of the gravity of offence
and any order sort of dismissal would have been
encouragement to other workman to do such acts in future,
which would have greatly jeopardised the safe working of
the mines. Accordingly the management has prayed for
passing an Award to the effect that the action of the
management of Bhowra Area of M/s. BCCL in dismissing
the services of Shri Anand Prasad Baidyakar with effect
from 8-11-93 is justified and the concerned workman is not
entitled to any relief.

POINTS FOR DECISIONS

4. The points for decision in this reference are :—

"Whether the action of the management of Bhowra
(S) Colliery of Bhowra Area of M/s. BCCL in
dismissing the services of Sri Anand Prasad
Baidyakar w.e.f. 8-11-93 is justified? If not, to
what relief the concerned workman is entitled?"

DECISIONS WITH REASONS

5. It is admitted fact that the concerned workman was appointed as General Mazdoor on 7-11-83. He was allowed to work as Register Keeper. It is the allegation of the management that on 24-10-93 the concerned workman tore the page of Form-C Register in A shift while he was on duty and it was seen by the G.M.(O) and due to such misdeed records of persons attended on that date could not be available. Over that issue not only chargesheet was given to the concerned workman but he was also suspended from his service. Thereafter a departmental enquiry was held and in course of departmental enquiry different witnesses of the management were examined and after completion of departmental enquiry the concerned workman was found guilty of misconduct and accordingly he was dismissed from his service. Being aggrieved by and dissatisfied with the decision made by the management the concerned workman raised this industrial dispute by way of reference. Over the fairness and propriety of the domestic enquiry a preliminary hearing was taken up by the Tribunal and the Tribunal by order No. 45 dt. 17-8-99 held that the departmental enquiry was fair and proper. Now the point for consideration is if the dismissal order passed by the management was in accordance with the law or not and also if it is in conformity with natural justice. There is no dispute to hold that at the relevant date i.e. on 24-10-93 the concerned workman was on a shift duty. It is the specific allegation that while the Attendance register was in his custody in A shift duty he tore the page of that attendance register and for which there was no scope to verify the records of the other workers present on duty on that relevant date and that misdeed was seen by the G.M.(O). As such the moot question is whether the concerned workman tore the page of the Attendance Register dt. 24-10-93. In course of domestic enquiry a number of witnesses including G.M.(O) were examined by the Enquiry Officer on the part of the management. I have considered the statement of the witnesses recorded by the Enquiry Officer. From the statement I do not find any material relying on which it can be said that the page of that Attendance Register was actually torn by the concerned workman. The witnesses in course of their examination actually did not disclose anything relying on which there is scope to say that they saw the concerned workman to tear the page of the Attendance Register. The Enquiry Officer after going through the contents of the chargesheet and reply of the chargesheet statement of the management witnesses and the delinquent workman as well as cross-examination made the observation to the effect that :---

1. That on 24-10-93 in the 'A' shift Sri Ananto Pd. Baidykar General Mazdoor OCP was discharging his duty as Register Clerk at 3 Pit OCP.
2. Shri P. K. Roy, General Manager (Operation) inspected No. 3 Pit OCP in the 'A' Shift on 24-10-93.
3. During the inspection of the Attendance room at 3 Pit OCP by the G.M.(O) at about 6.15 A.M. Sri

Dhoopchand, Register Clerk of the Night shift of 23-10-93 was present there at that time and in his presence the Attendance Register of 24-10-93 'A' shift was checked and marked/encircled by the G.M.(O).

4. Necessary instructions were passed by the G.M.(O) to the Register Clerk of 'A' shift in presence of the R/C of Night shift of 23-10-93 (who had to remain there due to Late arrival of R/C of 'A' shift) that whosoever comes late their attendances may be booked/marked putting the time of arrival against each and the register should be closed.
5. It is found that the checked and marked attendance register by the G.M.(O) was under the disposal of Sri Baidykar, General Mazdoor working as Register Clerk on 24-10-93 in the 'A' shift and was handed over to him by the Register Clerk, Sri Dhoopchand while leaving the Attendance Room.

Therefore, considering the observations of the Enquiry Officer it is seen that the G.M.(O) checked the attendance register in presence of Dhoopchand, Register Clerk of the night shift of 23-10-93. From this observation it cannot be ascertained if at the relevant time and checking of the Attendance Register by the G.M.(O) the concerned workman was present. It is seen that afterwards the concerned workman joined his duties and remained incharge of the Attendance Register. Thereafter the incident of tearing page of the Attendance Register came to the knowledge of the management. In course of hearing on preliminary point before this Tribunal WW-2 submitted categorically that he was on duty on 24-10-93 in General Shift at Bhowra (South) Open Cast Project. The register of different shift used to be kept in his custody as Register Incharge. No Attendance Register of shift A of 24-10-93 was seized on that date but it was seized on 28-10-93 and during this period he did not find any damage of any page of that register on that date. Prior to seizure of the Register on 28-10-93 the attendance of the worker was noted. One H. Throt, Sr. P.O. seized that register on 28-10-93. If the observation made by the Enquiry Officer and if the evidence of WW-2 are taken into consideration it will expose a serious contradiction about the custody of the Attendance Register as well as of its seizure and also the allegation on the point of tearing of the page of the Attendance Register. During cross-examination the facts which WW-2 disclosed was not at all challenged and accordingly it stands. This WW-2 was also examined by the Enquiry Officer and the statement given by him before the Enquiry Officer is marked as Ext. M-3. I have considered the statement which was given by him before the Enquiry Officer and I find that it goes far away from the evidence which he gave on oath before the Tribunal in course of preliminary enquiry. Therefore, reliance of the statement given by the WW-2 before the Enquiry Officer before fixing responsibility upon

the concerned workman find no basis at all. The attendance register also was not produced in course of preliminary hearing by the management concerned. No evidence is forthcoming that the Attendance Register was seized on 24-10-93 by the management while the same was in custody of the concerned workman. I do not find, on perusal of the record and also the statement of the witnesses that the concerned workman tore the pages of the Attendance Register. It is true that the concerned workman was on 'A' Shift duty and he was in custody of Attendance Register for which he cannot exonerate his responsibility to explain how the pages of the Attendance Register was torn. Learned advocate for the concerned workman during hearing argument submitted categorically that the story of tearing pages of Attendance Register is a false allegation brought against the concerned workman without any reason. Here the seizure of the Attendance Register in presence of the concerned workman has to be considered with vital importance. As all the Attendance Registers are kept under the custody of the Register Incharge he cannot also exonerate his responsibility to explain how the pages of the Attendance Register were torn. It is seen that the Register Incharge, i.e. WW-2 did not disclose anything while he was examined at the time of preliminary enquiry. However, it is clear from the materials on record that the concerned workman was not the sole custodian of the Attendance Register. As such responsibility rests on the management to show that the pages of the Attendance were actually torn out while that Attendance Register was in custody of the concerned workman. Until and unless it is so established there is little scope to draw a definite conclusion that the concerned workman while on duty tore the pages of the Attendance Register while it was in his custody. I have carefully considered the findings of the Enquiry Officer and I do not find any hesitation to say that the findings is full of discrepancies with all perversity. From the report it is not clear how the Enquiry Officer came to final conclusion that it was the concerned workman who tore the pages of the Attendance Register. However, relying on this perverse report the management dismissed the concerned workman from his service which I think was done absolutely in a very illegal way and against all natural justice. As the management has failed to establish beyond all reasonable doubt that it was the concerned workman who tore the pages of the Attendance Register while he was on duty in a shift on 24-10-93 he is entitled to get the benefit of doubt and when the benefit of doubt comes in it was not wise enough on the part of the management to pass the order of dismissal against the concerned workman. In the result, the following Award is rendered :—

“The action of the management of Bhowra (S) Colliery of Bhowra Area of M/s. BCCL in dismissing the services of Shri Anand Prasad Baidykar w.e.f. 8-11-93 is not justified. Consequently, the concerned workman is entitled reinstatement if his original post with full back wages and other consequential benefits from the date of his

dismissal to the date of his reinstatement.”

The management is directed to reinstate the concerned workman to his original post with payment of full back wages and other consequential benefits as directed above within three months from the date of publication of the Award.

B. BISWAS, Presiding Officer.

नई दिल्ली, 4 जुलाई, 2001

का.आ. 1845.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-20012/418/98-(सी. आई.)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1845.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 2-7-2001.

[No. L-20012/418/98-(C.I.)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD.

PRESENT

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d)

REFERENCE NO. 198 OF 1999

PARTIES: Employers in relation to the
management of Koyla Bhawan (IR&P)
of M/s. B.C.C. Ltd. and their workmen

APPEARANCES:

On behalf of the workmen : None
On behalf of the employers : Shri H. Nath,
Advocate.
State : Jharkhand Industry : Coal.

Dated, Dhanbad the 20th June, 2001.

AWARD

The Govt. of India, Ministry of Labour, in exercise
of the powers conferred on them under Section 10(1)(d)

aggrieved persons w.e.f. 02-01-1991 in special grade, payment of arrear wages for the period 02-01-1991 to 19-11-1997 and allotment of "B" type quarters on out of turn basis.

“Whether the action of the Management of B.C. Ltd., in placing S/Sh. K.P. Kar, B.P. Singh and 18 others clerks (as per list annexed with the schedule of reference) as juniors to Shri Seo Balak Sharma in the seniority list of the Special Gr. Clerk is justified ? If not so, to what relief S/Sh. M.P. Kar, B.P. Singh and 17 other clerks are entitled to ?”

B. BISWAS, Presiding Officer

SHORT RECITAL OF THE CASE

The Union claimed that one Shri Sheo Balak Sharma Grade-II Clerk, CCL was transferred to BCCL Headquarters on his own request in March, 1979. The said transfer order specified that Shri Sharma will not be entitled to protection of his seniority of CCL. However, in the year, 1986, Management of BCCL upgraded Shri Sharma in Clerical Grade-I w.e.f. 31-12-1982 based on the length of his service in CCL. Later in 1991, the Management of BCCL promoted Shri Sheo Balak Sharma to the post of Special Grade Clerk w.e.f. 02-01-1991. Aggrieved Grade-I Clerks who were senior to Shri Sheo Balak Sharma as per BCCL seniority, first objected to his promotion and thereafter raised the instant Industrial Dispute through Janta Mazdoor Sangh, Management of BCCL took the stand that experience of Shri Sharma in CCL was considered for upgradation only. It was also stated that all the aggrieved Grade-I Clerks had been promoted to the post of Special Grade Clerk w.e.f. 19-11-1997. The Union insisted on their demands of seniority of the

After several rounds of discussion it was agreed by the Union, the Management and the concerned workmen to resolve the dispute on the following terms and conditions :

TERMS OF SETTLEMENT

- (1) Management of BCCL agreed to grant Notional Seniority to the aggrieved workmen, S/Shri M.P. Kar, Bacha Pd. Singh, R.K. Chowda, Adbul Madud, Ranglal Mandal, Sheo Das Banerjee, N.R. Das, Manik Chakraborty, Balister Rai, S.N. Singh, Sukhdeo Ram, Basudeo Ghosh, R.K. Mishra, A.K. Jha, Wakil Singh, G.N. Prasad, Bachu Pd. Singh and R.N. Sharma in special grade clerk (NF) w.e.f. 02-01-1991, the date on which Shri Sheo Balak Sharma was promoted to the post of Special Grade Clerk.
- (2) It is also agreed the workmen named above will not be given back wages OR arrears due to their above notional seniority. They shall not also raise any claim of back wages OR arrears before any authority subsequent to this settlement. They will be given only the benefit of Notional Fixation in Special Grade w.e.f. 02-01-1991. Actual monetary benefit will be given to the above named workmen from the date of issue of administrative order in this regard. However, the above named workmen will be placed in the seniority list of Spl. Grade Clerk (NF) above Shri Sheo Balak Sharma.
- (3) Their entitlement of quarters will be as per prevailing House Allotment Rules. In the seniority list to be issued by Koyla Nagar Town Administration for the purpose of allotment of quarters, they will be appropriately placed in Special Grade w.e.f. 02-01-1991.
- (4) This settlement will not be cited by any body in any other case as precedence. S/Shri M.P. Kar and 17 other workmen named above have agreed not to raise any claim of monetary benefit whatsoever as a result of Notional Seniority granted to them. This settlement is purely for the purpose of their Notional Seniority only.
- (5) Both the party agreed to file copy of this settlement through their Lawyers before the Presiding Officer, CGIT, Dhanbad with a request to issue a bi-partite Settlement Award.
- (6) This settlement successfully and finally concludes and resolve the dispute in full.

MANAGEMENT SIDE :

- (1) Shri V.P. Gupta
General Manager I/C
(P & IR)
- (2) Shri D.B. Singh
General Manager
(NEE) IMP
- (3) Shri W. Naseem Haider
Dy. Chief Personnel
Manager (NEE)

UNION SIDE :

- (1) Shri Bachcha Singh
General Secretary
JANTA MAZDOOR
SANGH
- (2) Shri Padmakar Dutta
Jt. Secretary JMS, HQ
Branch.
- (3) Shri M.P. Kar, Clerk
Sales Deptt.
- (4) Shri Bacha Pd. Singh,
Clerk, Sales Deptt.
- (5) Shri R.K. Chowda, Clerk
HRD Deptt. Kalyan
Bhawan.
- (6) Shri Abdul Madud
Clerk Sales Deptt.
- (7) Shri Ranglal Mandal,
Clerk Sales Deptt.
- (8) Shri Sheo Das Banerjee,
Clerk IR Deptt.
- (9) Shri N.R. Das, Clerk GM
(Co-ordn.) Office
- (10) Shri Manik
Chakraborty, Clerk
Sales Deptt.
- (11) Shri Balister Rai, Clerk
Safety Deptt.
- (12) Shri S.N. Singh, Clerk
MP & IR Deptt.
Despatch.
- (13) Shri Sukhdeo Ram,
Clerk Legal Deptt.
- (14) Shri Basudeo Ghosh,
Clerk GM (P&IR)
Sectt.
- (15) Shri R.K. Mishra, Clerk
M.M. Division.
- (16) Shri A.K. Jha, Clerk
Koyla Nagar Hospital.
- (17) Shri Wakil Singh, Clerk
MM Division.
- (18) Shri GN Prasad, Clerk
Sales Deptt.

- (19) Shri Bachu Pd. Singh.
Clerk MM Division.
- (20) Shri R.N. Sharma, Clerk
MM Division.

नई दिल्ली, 4 जुलाई, 2001

का.आ. 1846.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-24012/136/86-डी. IV(बी)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 4th July, 2001

S.O. 1846.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CCL and their workmen, which was received by the Central Government on 2-7-2001.

[No. L-24012/136/86-D.IV, (B)]
S.S. GUPTA, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD**

PRESENT

Shri B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 253 OF 1987

PARTIES : Employers in relation to the
management of Bokaro Colliery of
M/s. C.C. Ltd. and their workmen.

APPEARENCES :

On behalf of the workmen : None

On behalf of the employers : Shri B. Joshi
Advocate.

State : Jharkhand

Industry : Coal.

Dated, Dhanbad the 14th June, 2001.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/(136)/86-D-IV(B), dated, the 24th August, 1987.

SCHEDULE

"Whether the action of the Management of Bokaro Colliery of M/s. C.C. Ltd., PO Sunday Bazar (Berma) Giridih in terminating the services of Sri Habib Mian on 7-3-1986 is legal and justified when his date of birth as per Form-B Register is 25-7-1934 ? If not, to what relief the concerned workman is entitled ?"

2. In this reference both are parties appeared and filed their respective W.S. and documents. Subsequently at the stage of oral evidence, learned Advocate for the management was present but no one appeared on the side of the workman. It reveals from the records that this reference is pending since 1987. It is of no use to drag the same for years together. Under such circumstances, a 'No dispute' Award is rendered and the reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any Industrial Dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 2 जुलाई, 2001

का.अ. 1847.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम्प्लॉयमेंट आफिसर, केन्टोनमेन्ट बोर्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-13011/7/2000-आई. आर.(डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Executive Officer, Cantonment Board and their workmen, which was received by the Central Government on 2-7-2001.

[No. L-13011/7/2000-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL :
GUWAHATI : ASSAM

REFERENCE NO. 20(C) OF 2000

Present : Shri K. Sarma, LL.B., Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial dispute between :

The Management of Executive Officer, Cantonment
Board, Shillong.

Vs.

Their workmen rep. by General Secy., Cantonment
Board Employees Union, Shillong.

Date of Award : 5-6-2001

AWARD

The Govt. of India, Ministry of Labour, vide order No. L-13011/7/2000/IR(DU) dt. 28-9-2000 has made this reference to this tribunal to adjudicate the dispute arising between the management of the Executive Officer, Cantonment Board, Shillong and their workmen represented by General Secy., Cantonment Board Employees Union, Shillong, claiming better housing accommodation from the management as the quarter provided by them are not safe for their staying. The appropriate Govt. has framed the following issue for the purpose of deciding the matter in controversy between the parties :

"Whether the action of the management against 48 Nos. of quarters where workmen and their family members are staying in great danger is justified? If not, to what relief the workmen are entitled?"

This reference is fixed for hearing today. The representative of the both the parties are present. Both of them have declined to adduce oral evidence and submit for deciding the reference on the basis of the documents filed by them.

The representative of the management is heard. The fact of the case is that 48 workmen of Cantonment Board, Shillong have raised this industrial dispute against the management claiming better housing accommodation from the management as the quarters provided them are not safe for their staying.

The management has plainly submitted that if the workmen are not willing to stay in the quarters provided to them, the management is ready to pay the house rent allowance @Rs. 400 p.m. to each of the workman raising this industrial dispute and they may make alternative arrangement for their staying. The workmen appearing before this tribunal representing 48 workers raising the Industrial dispute has also conceded to the offer made by the management. As the offer of the management is accepted by the workmen, I have no difficulty in passing the award in terms of offer and acceptance made by the parties.

Accordingly, it is ordered that within a period of one month from the date of this award, the workmen shall vacate the quarter of the management and make private arrangement for their staying and management shall pay Rs. 400/- p.m. to every workmen as house rent allowance.

With this award this reference is finally disposed. Prepare an award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1848.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर, चेन्नई टेलीफोन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-40025/5/2001-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1848.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Chennai Telephones and their workmen, which was received by the Central Government on 2-7-2001.

[No. L-40025/5/2001-IR/(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. LABOUR COURT,
CHENNAI

PRESENT : THIRUB. GOKULDAS, B.A., B.L.,
Presiding Officer.

Thursday the 31st Day of May, 2001

Industrial Dispute No. 1 of 1997

Thiru K. Muthuveeran,
S/o Thiru A. Kasi,
2, Rajamuthiapuram, Chennai 28 ... Petitioner
Vs.

The Union of India, Rep. By the Chief
General Manager, Chennai Telephones,
No. 78, Purasawalkam High Road,
Chennai-10 ... Respondent

AWARD

This is an industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947, to direct the respondent to give appointment to the petitioner in regular vacancy as he has completed the work in temporary capacity from 1985 to 1991 for more than the statutory period.

2. The respondent has filed counter-statement.

3. To-day the dispute is taken up for enquiry. Both sides absent. The petitioner has filed petition to permit him to withdraw the I.D. and allowed. Hence, the petitioner is permitted to withdraw the petition with liberty to continue

the LD. 490/2001 before the Central Govt. Industrial Tribunal upon the same cause of action. In the result this Industrial dispute is closed. No costs.

Dated at Chennai, this the 31st day of May, 2001.

B. GOKULDAS, Presiding Officer

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1849.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब-डिवीज़नल इन्स्पेक्टर ऑफ पोस्ट आफिसेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पालाक्कड़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-40012/290/99-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S. O. 1849.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum Labour Court, Palakkad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Inspector of Post Offices and their workmen which was received by the Central Government on 2-7-2001.

[No. L-40012/290/99-IR (DU)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
PALAKKAD

Friday, the 4th May, 2001

PRESENT :

Sri. B. Ranjit Kumar
Industrial Tribunal

Industrial Dispute No. : 6/2000(C)

Between

- (1) Sub-Divisional Inspector Post Offices, Trichur South Sub-Division, Trichur-680001.
- (2) Assistant Superintendent of Post Offices, Trichur (South) Sub-Division, Trichur.

(By Adv. K. Bhavadasan, Government Pleader)

And

Shri M. G. Anilkumar, Kundamkulangara House, Kolazhy (PO), Trichur-680 001.

(By Adv. P. C. Sebastian, C.S Ajith Prakash & T.K. Devarajan)

AWARD

The Government of India, Ministry of Labour as per order No : L-40012/290/99/IR (DU) dated 21-12-1999, referred the following issues for adjudication :

"Whether the action of the Sub-Divisional Inspector of Post Offices in terminating the services of Shri M. G. Anilkumar, Extra-Departmental Delivery Agent at Ayyappankavu w.e.f. 16-2-99 is legal and justified? If not, to what relief the workman is entitled?"

2. The workman would submit in his claim statement dated 7-2-2000 and rejoinder dated 8-7-2000 that he had worked under the management as Extra Departmental Mail Carrier, Kodannur continuously during the period from 10-12-96 to 2-6-98 and on 3-6-98 he was appointed as Extra Departmental Delivery Agent at Ayyappankavu Post Office against a clear vacancy, and he continued in that post till 15-2-1999. His grievance is that his services were terminated on 16-2-1999 without notice or notice pay and without paying compensation or assigning any reason. It is submitted by the workman that the termination of his services is in gross violation of the provisions of Sections 25-F and 25-G of the I. D. Act and he is entitled to be reinstated in service with backwages.

3. The Assistant Superintendent of Post Offices, Thrissur (South) Sub Division, Thrissur filed a counter statement dated 5-6-2000 stating that he is the appointing authority of Extra Departmental Delivery Agents/Mail Carriers and there is no officer designated as the Sub Divisional Inspector in Thrissur (South) Sub Division. In view of this submission, the workman filed M. P. No. : 221/2000 with a prayer to implead the Assistant Superintendent of Post Offices, Thrissur (South) Sub Division, Thrissur as an additional party in this dispute. This petition was allowed as per order dated 14-8-2000. Thereafter, the impleaded party filed a statement dated 6-11-2000 stating that he is adopting the written statement dated 5-6-2000.

It is contended by the management that the department of post is not an industry within the meaning of I. D. Act and the workman is not entitled to the benefit of the said Act. On the merit of the dispute, the management would submit that the workman was provisionally engaged to work as the Extra Departmental Mail Carrier (EDMC in short) at Kodannur Post Office on 28-7-97 by the then Assistant Superintendent of Post Offices, Thrissur (South) Sub Division, for the period from 29-7-97 to 30-9-97 and later the workman was engaged to work as substitute in the post of Extra Departmental Delivery Agent, Ayyappankavu for the periods from 3-6-98 to 30-6-98, 1-7-98 to 8-7-98, 17-7-98 to 31-7-98, 1-8-98 to 30-9-98 and from 1-10-98 to 15-2-99 on purely adhoc basis as a stop-gap arrangement against the vacancy caused by the put off vacancy of Sri. T. K. Vareed, EDDA, Ayyappankavu. According to management, it was not an appointment by the Postal Department, but was only an engagement at the

responsibility of the Branch Postmaster, Ayyappankavu. It is further submitted by the management that provisional appointment was made to the said post with effect from 16-2-99 after observing the usual formalities by the Assistant Superintendent of Post Offices, Thrissur (South) Sub Division on 5-2-99 and the workman was also a candidate for the interview held on 5-2-99. The management would further submit that if the workman had been at any time engaged to work as EDDA or EDML prior to 28-7-97 at Kodannur or such other post offices in leave vacancy or otherwise, it is purely at the risk and responsibility of the EDDA or EDML concerned and the Department has no responsibility for such engagement. According to management, the termination of the appointment of the workman on 15-2-99 is perfectly legal and valid and the workman is not entitled to any relief.

5. The contention of the management that the Post Office is not an industry within the meaning of Section 2(j) of the I.D. Act is found to be devoid of any merit. The management has raised this contention based on the decision of the Supreme Court in *Sub Divisional Inspector of Post Office Vs. Theyyamma Josep*—1996 (8) SCC 489. It is true that in this case a Two-Judge Bench of the Supreme Court has held that the Postal Department is not an "Industry" within the meaning of Section 2(j) and EDEA who are governed by EDA Conduct and Service Rules do not belong to the category of "Workman" attracting the provisions of the I.D. Act. This decision has been overruled by a Three-Judge Bench decision of the Supreme Court in *General Manager Telecom Vs A. Srinivasa Rao*—(1997) 8 Sec. 767. In this case the Supreme Court has clearly held that the decision in *Theyyamma Joseph's case* cannot be treated as laying down the correct law. Therefore, the decision in *Theyyamma Joseph's case* (Supra) is no longer good law and cannot be relied upon.

6. The further contention of the management is that the Extra Departmental Delivery Agents like the workman herein are governed by the Extra Departmental Agents (Conduct and Service) Rules, 1964 and hence they will not come under the purview of the I. D. Act is also based on the decision of the Supreme Court in *Theyyamma Joseph's case* (Supra) which has been overruled by a larger bench in *Telecom Case* (Supra). It is true that in *Bangalore Water Supply Case*—1978 SCC (L&S) 215, the Constitution Bench of the Supreme Court has made a suggestion that the employees whose service conditions are governed by rules framed under Article 309 of the Constitution of India may be excluded from the purview of the I.D. Act. It is observed in the majority judgement as follows :—

"In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the

operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout."

The Hon'ble Chief Justice of the Supreme Court who has rendered a separate, but concurring judgement in *Bangalore Water Supply Case* has concluded the judgement as follows :—

"168. Hence, to artificially exclude State-run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulate tests of 'industry' which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon."

7. In the light of the above observations of Supreme Court, it is abundantly clear that merely because certain categories of employees are governed by statutory rules made under Article 309 of the Constitution or otherwise, they will not automatically be taken out of the purview of the I. D. Act. The Parliament or State Legislature is competent to exclude certain category of employees from the purview of the I. D. Act by framing special statutory rules and by incorporating a specific provision therein to that effect. But even in that case, the provisions of Chapter VI-A of the I. D. Act will prevail over the special rules (see the decision of the Supreme Court in *Vikramaditya Pandey Vs. Industrial Tribunal*—AIR 2001 SC 672). It is also possible to amend the provisions of the I. D. Act, excluding such category of employees from the purview of the said Act. A Full-Bench of the Kerala High Court has re-affirmed this view at para 15 of its judgement in *Umayammal Vs. State of Kerala*—1982 KLT 829.

8. As long as Section 2(s) of the I. D. Act as it stands now, only the following categories of employees are excluded from the purview of the said Act.

- A person
- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
 - (ii) who is employed in the police service or as an officer or other employee of a prison; or

- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. A reading of Section 2(s) clearly indicates that all other employees who satisfy the main part of the said Section are entitled to the benefit of the I. D. Act. In the case at hand, the management has no case that the workman concerned in the dispute is covered by any of the excluded categories coming under Clause I to IV of Section 2(s) or he does not satisfy the main part of that Section. Therefore, I hold that he is a "workman" as defined in Section 2(s) of the I. D. Act.

10. I am of the considered opinion that in the absence of any specific provisions in the I.D. Act, the EDAS cannot be excluded from the purview of that Act. There are a number of public sector employees who are governed by service rules similar to that of EDA's Conduct and Service Rules (Eg. Employees of Food Corporation of India who are governed by Staff Regulations, 1971, Railway employees governed by Railways Establishment Manual, Municipal employees governed by concerned State Act/Rule etc.). By any stretch of imagination, it can be held that these categories of employees are excluded from the purview of the I.D. Act for the reason that their service conditions are governed by separate service rules. I am of the view that these service rules are just like standing orders framed under the Industrial Employment (Standing Orders) Act, 1946.

11. According to management, the workman concerned in this dispute is governed by EDA Conduct and Service Rules, 1964. There is no evidence to show that these Rules were framed under Article 309 of the Constitution. A Scrutiny of these rules reveals that this is only compilation of certain executive instructions/orders and not the Rules made under Article 309. It is now well settled that the government is not competent even to add or amend the Rules framed under Article 309 by issuing executive/administrative instructions. (See the decisions in *State of Harivana v/s Shamsher Jang Bahadur*—AIR 1972 SC 1546 and *O.P. Lather V/s Sathish Kumar Kakker*—2001 AIR SCW 619). Justice Talwar Committee which has set up by the Government of India to go into the service conditions of EDAs has observed in its report that in view of the 1959 Statutory Rules under the proviso to Article 309 of the Constitution, the EDAs were treated on the same footing as Government Servants, but the position has changed consequent on the repealment of that Statutory Rules and promulgation of EDA conduct and Service Rules, 1964. Therefore, it cannot be held that EDAs are now Government Servants or that they are outside the purview

of the I.D. Act. In fact, there is no provision in these Rules excluding EDAs from the purview of the I.D. Act. This position has been clarified by a Full Bench of the Kerala High Court as early as in 1982 in *Umayammal v/s State of Kerala*—(1982 KLT 829). In *Umayammal case*, following the decision of the Supreme Court in *Bangalore Water Supply case*, the Full Bench of the Kerala High Court has held as follows :—

“From the observations of Justice Krishna Iyer and Chief Justice Beg it will not follow that merely because there is a provision in regard to temporary appointees as in Rule 9(a) of the Kerala State and Subordinate Services Rules, such appointment will stand excluded from the purview of the Act. In this connection we might note here S. 25-J of the Act, occurring in Chapter V-A. It reads as hereunder :

“25-J. Effect of laws inconsistent with this Chapter—(1) The provisions of this Chapter shall have effect notwithstanding any thing inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) :

Provided that where under the provision of any Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.”

In spite of S. 5-J it may be possible to exclude the operation of the provisions of Chapter V-A of the Act by a positive provision in any new legislation. However one cannot say that Rule 9 of the K.S.S.R. is such a positive provision in any way repealing either expressly or by implication the provisions in Chapter V-A of the Act as regards the temporary Government employees who are workmen coming within the ambit of the Act. It could not also be said that there is any inconsistency between the provisions in Chapter V-A of the Act and Rule 9 of the K.S.S.R., because of the time limit fixed for the period of continuance in

service of a temporary appointee as per the said rule. Such time limit would certainly apply to a person who will not come within the ambit of the term “workman as defined in the Act.”

12. I am of the considered opinion that in view of the decision of the Supreme Court in *Telecom case* and *Vikramaditya case* (Supra) and that of the Full Bench of the Kerala High Court in *Umayammal Case*, the EDAs like the workman herein cannot be held as non-workmen under the I.D. Act.

13. It is also contended by the management that the reference order is defective for non-joinder of necessary parties as the Union of India is not made as a party. The second management himself has admitted that he is the appointing authority of the workman concerned in this dispute. Therefore, he can be very well treated as the employer for the purpose of the present adjudication proceedings and I am of the view that it is not necessary to implead Union of India as a party to this dispute.

14. The concerned workman has been examined as WW1 and he has asserted that he has worked under the second management continuously for the period from 10-12-96 to 16-2-99. Ext. W1 to W4 documents produced by the workman also support that he had worked under the management during this period. WW1 has further stated that the Attendance Register will reveal the number of days worked by him. The management has not produced the Attendance Register before this Tribunal. The Assistant Superintendent of Post Offices who has been examined as MW1 was not in a position to state whether the workman had worked continuously for the aforesaid period. The workman has succeeded to establish that he had worked continuously under Management No. 2 during the period 10-12-96 to 16-2-1999.

15. According to workman, his services were arbitrarily terminated on 16-2-99 without giving him any notice or assigning any reason. On the other hand, MW1 has stated that his services were not terminated. But he has admitted that as per Ext. W4, the workman was relieved of the duties. Therefore, there can be no doubt that his services were terminated on 16-2-1999.

16. Now, the point to be considered is whether the termination of the services of the workman with effect from 16-2-1999 is legal and valid.

17. As per Section 2(oo) of the I. D. Act, the termination of services for any reason whatsoever would amount to retrenchment, except the cases coming under Sub-Clauses (a) to (c) thereof. Though it is stated by the management that the engagement of the workman was as a stop-gap arrangement, the management has not produced any document to show that his engagement after the period of Ext. W2 appointment letter was for a specific period or for any specific purpose. Therefore, it cannot be said that the termination of his services is covered by any of the exemptions given under Sub-Clauses (a) to (c) of Section 2(oo) of the I.D. Act.

18. According to workman, the termination of his services is in violation of the provisions of Sections 25-F and 25-G of the I.D. Act. In view of the findings of this Tribunal that the workman had rendered more than one year continuous service and the termination of his service would amount to retrenchment, it was incumbent upon the management to comply with the provisions of Section 25-F of the I.D. Act. As per the provisions of this Section, it was mandatory to give one month's notice in writing indicating the reasons for retrenchment or one month's wages in lieu of such notice, and also to give the workman at the time of termination, compensation @15 days wages for every completed year of service or part thereof in excess of six months. The management has not complied with the above pre-conditions at the time of termination of services of the workman on 16-2-99. Therefore, the said termination is clearly in violation of the provisions of Section 25-F of the I.D. Act.

19. The workman has not pointed out that any other persons who was junior to him was retained in service while his services were terminated. In the circumstance, it cannot be held that the management has violated the provisions of Section 25-G of the I.D. Act and the contention of the workman in this regard is found to be untenable.

20. The workman has not disputed the averment of the management that termination of his services was consequent on the regular appointment, for which he was also considered, but not succeeded in getting the appointment. The regular appointment is made in accordance with the provisions of Extra Departmental Agents (Conduct and Service) Rules, 1964. Since the workman has no case that he was appointed against the regular vacancy by following the procedure envisaged under the said Rules, he cannot claim continuous employment. He has to be replaced by a regularly appointed person. Therefore, it cannot be said that his services were terminated for any extraneous or malafide reasons. I am of the view that in these circumstances, the workman is entitled to only retrenchment compensation and notice pay in terms of Section 25-F of the I.D. Act and no other relief.

21. In the light of the aforesaid discussion, an award is passed holding that the action of the management in terminating the services of Sri. M.G. Anilkumar, Extra-Departmental Delivery Agent at Ayyappakavu w.e.f. 16-2-1999 is illegal and unjustified and he is entitled to the retrenchment compensation and one month's notice pay in terms of Section 25-F of the I.D. Act.

Dated this the 4th day of May, 2001.

B. RANJIT KUMAR, Presiding Officer

APPENDIX

Witnesses examined on the side of Management :

MW-1 Sri. P. K. Madhavan.

Witnesses examined on the side of Workman :

WW-1 Sri. Anilkumar.

Documents marked on the side of Management :

Nil

Documents marked on the side of Workman :

Ext. W1 Charge Report of assumption of charge of EDMC, Kodanur, dt. 10-12-96.

Ext. W2 Memo dated 28-7-97 issued by Post Offices, Thrissur South Sub-Division.

Ext. W3 Charge Report of assumption of charge of EDDA, Ayyappankavu, dt. 3-6-1998.

Ext. W4 Charge Report showing the discharge of workman on 16-2-1999.

नई दिल्ली, 2 जुलाई, 2001

का. आ. 1850 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेंट ऑफ पोस्ट आफिसेज के प्रबंधन के संबंध में संयुक्त नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-40011/28/2000-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S. O. 1850.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Superintendent of Post Offices and their workman, which was received by the Central Government on 2-7-2001.

[No. L-40011/28/2000-IR (DU)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 8th June, 2001

PRESENT :

K. Karthikeyan, Presiding Officer

Industrial Dispute No. 84/2000

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri V. Arunachalam and the Management, Superintendent of Post Offices, Kumbakonam Division, Kumbakonam.)

BETWEEN

V. Arunachalam : I Party/Workman

AND

The Superintendent of : II Party/Management
Post Offices,
Kumbakonam Division,
Kumbakonam.

APPEARANCE:

For the Workman : Ms. S. Jothivani &
R. Balagurusamy,
Advocates

For the Management : K. Sivajothi,
Ad. CGSC

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide Order No : L-40011/28/2000/IR (DU) dated 31-10-2000:—

“Whether the action of the Management of Superintendent of Post Offices, Kumbakonam Division, Kumbakonam, in removing from the services of Shri V. Arunachalam Ex-Department Sub-Postmaster, Vishnupuram from 26-11-1999 is justified? If not, to what relief the workman is entitled?”

This dispute on coming up before me for final hearing on 09-5-2001, upon perusing the reference, Claim Statement, Counter Statement and other material papers on record, the documentary evidence let in on either side and upon hearing the arguments of the learned counsel on either side and this dispute having stood over till this date for consideration, this Tribunal passed the following :—

AWARD

On receipt of this reference from the Govt. this industrial dispute has been taken on file as I.D. No. 84/2000 and notices were sent to both the parties by Registered Post with acknowledge due to appear before this Tribunal for hearing on 5-5-2001 with a direction for the I Party/Workman to file his Claim Statement with documents. On receipt of notice from this Tribunal, both the parties entered appearance through their counsel and filed their respective Claim Statement and Counter Statement.

2. The averments in the Claim Statement of the I Party/Workman are briefly as follows :—

The I Party/Workman, Sri V. Arunachalam (hereinafter referred to as Petitioner) was appointed as Departmental Sub-Postmaster, Vishnupuram by the II Party/Management Superintendent of Post Offices (hereinafter referred to as Respondent) on 1-4-1981. The respondent is the appointing authority as well as the Disciplinary Authority. The Respondent had issued a charge memo dated 21-3-87 alleging three articles of charges stating that the Petitioner had violated Rule 17 of P & T E.D. Agents (Conduct and Service) Rules, 1964. The Petitioner had denied the charges levelled against him. The Respondent had appointed Sri M. Rathinam, Postmaster Kumbakonam as Enquiry Officer and Sri S. Gopalakrishnan, SDI (P) Kumbakonam North Sub-Division as Presenting Officer. The Petitioner had nominated Shri Dilip retired P.R.I. (P) as his defence assistant. The Enquiry Officer finally concluded that the charges have been proved and submitted his report. The Respondent agreed with the Enquiry Officer's findings had imposed punishment of removal from service and the Petitioner was terminated from service on 26-11-99. The Enquiry Officer had conducted the proceedings in contravention of rule and law. He denied reasonable opportunity to the Petitioner, which is a violation of principles of natural justice. Hence, the entire proceedings is vitiated. In Annexure 3 of the charge sheet, the Respondent had cited 32 documents by which the articles of charges framed are proposed to be sustained. In the charge sheet, the Petitioner was directed to submit his written statement of defence within ten days of the receipt of the charge memo. The Department has given administrative instructions that the copies of documents relied by the Disciplinary Authority should be sent along with the charge sheet to the charge sheeted employee. The Procedure for holding a departmental enquiry was not followed by the Respondent. The copies of documents and statements must be made available to the charge sheeted employee along with charge sheet for him to make his reply. The failure to furnish copies of documents along with charge sheet is denial of opportunity, hence the whole enquiry is vitiated. The Petitioner called for some documents, which are in the custody of the Respondent for perusal to have effective cross examination of witnesses and to prove his innocence. Though the Enquiry Officer had directed the Respondent to furnish copies of documents to the Petitioner, the Respondent had refused to supply the documents for the perusal of the Petitioner. It has been noted by the Enquiry Officer in the order sheet. The Respondent has acted contrary to Rule 14(13) of CCS (CCA) Rules, 1965. The documents called for can be rejected only when it is against the public interest or security of the State. Hence, the Respondent's refusal to furnish the document amounts to denial of reasonable opportunity for the Petitioner to defend his case and that denial is in violation of principles

of natural justice and it vitiates the whole proceedings. The Petitioner was charged under three counts for the alleged misappropriation of certain sums. The charge was issued on the basis of a preliminary enquiry done by Sri V. Raman, SDI (F) Kumbakonam, North Sub-division. Therefore, the Petitioner called for the preliminary investigation report. But it was not furnished to the Petitioner. The denial of preliminary enquiry report amounts to denial of reasonable opportunity to the Petitioner, delinquent employee and it is violative of principles of natural justice. The investigating officer obtained statements from the witnesses in the absence of the Petitioner. Those statements were admitted by the Enquiry Officer as documents in the enquiry. Administrative instructions were given by the Ministry of Home Affairs to that effect that evidence of witnesses proposed to be used against the Govt. servant in the departmental proceedings should be recorded in his presence. The evidence recorded in the fact finding enquiry in the absence of Govt. servant should not be brought in the proceedings. Therefore, the whole proceedings are vitiated due to this illegality committed by the Enquiry Officer. This is a case of no evidence. The Petitioner had kept the cash outside the office as per the enabling rule and he had produced the same within a reasonable time as per that enabling provision. So, the first charge cannot be said to be proved. The witnesses in respect of R.D. Accounts and the S.B. Accounts have not been produced as prosecution witnesses during enquiry. Hence, there is no evidence for the charges alleged against him. Further, before the Enquiry Officer the witnesses Sri G. Amutha and R. Chandrasekaran have also not appeared and gave evidence. The Respondent had indulged in unfair labour practice and imposed an excessive punishment to the petitioner. Hence an award may be passed setting aside the impugned order dated 26-11-99 passed by the Respondent/Management and by directing the Respondent/Management to reinstate the Petitioner in the same post with all attendant and monetary benefits.

3. The averments in the Counter Statement of the II Party/Management are briefly as follows :—

The Petitioner was issued charge sheet dated 21-3-97 for keeping shortage of cash of Rs. 3,747.35, committing frauds in R.D. accounts and non-entrustment of money orders to the EDDA received for payment on 9-1-97. Thus he violated the Rule of 17 of P & T EDA's (C & S) Rules, 1964. The Enquiry Officer conducted the enquiry by giving reasonable opportunity to the Petitioner in addition to adopting the principles of natural justice. He conducted the proceedings in accordance with the rules in force. He submitted his report dated 17-7-99 stating that three charges levelled against the Petitioner were proved. Tanking into account the report of the Enquiry Officer

and connected accounts, the Superintendent of Post Offices, Kumbakonam removed the Petitioner from service by his order dated 26-7-99. The charge memo dated 21-3-97 was served on the Petitioner and he received the same without any objection. All the relevant documents were supplied to him. He was allowed to nominate his defence assistance as per his choice. The documents which were not relevant to case and personal in nature were not supplied to the Petitioner. He was allowed to cross examine all the witnesses. He was not denied reasonable opportunity in defending his case. There is no mention in the charge sheet regarding preliminary investigation report. The charges framed against the Petitioner is based on the documents and statements given by the depositors and independent witnesses. Hence, there was no need to supply preliminary investigation report. There is no illegality committed by the Enquiry Officer in this case. The Rule allowing the ED agents to keep cash and stamp balances is meant only for safe custody of valuables during the off hours. Normally he is expected to keep in the office during working hours. The Petitioner merely kept the cash balance in his personal custody. He should have sought permission from the investigating officer to leave the office and produce them within reasonable time. In his statement dated 9-1-97, he has stated that he used the office cash balance for his personal expenses. Now, it is his contention that he was not allowed to produce the cash balance is only an after thought. On verification with the depositors to ascertain the balances shown in the passbook, it was revealed that Rs. 50/- and Rs. 10/- given by the depositors on 6-1-97 were not credit into the account and the depositors were given statements to that effect. The Petitioner has also accepted the version of the depositor as true and voluntarily credited the amount subsequently into the Govt. account. The witnesses had not appeared before the investigating officer. The charge was proved based on the statements and voluntary credit made by the Petitioner and other documents. The Petitioner in his statement submitted that he did not entrust the money order for payment to EDDA as there were shortage of office cash. As per the rule in force intimation has to be served through EDDA only in respect of money orders exceeding the value of Rs. 750/-. EDDA has stated that money order to the value of Rs. 100/- was not entrusted to him for payment and payee Shri Mahalingam also stated that he did not received intimation of receipt of money order through EDDA. Similarly Smt. K. Saraswathi did not receive the payment of money order or intimation through EDDA on the date of receipt. This money order was not entrusted to EDDA for payment. No fair attempt has been made to effect the payment of money order. As a Govt. servant the Petitioner should maintain absolute integrity and devotion to duty as required by rules, the punishment is awarded after taking

into consideration the financial irregularities and other lapses committed by the Petitioner as detailed in the charge sheet. Hence, the claim of the Petitioner in this industrial dispute has to be dismissed.

4. When the matter was taken up for enquiry exhibits were marked by the consent as Ex. M1 to M4 and Ex. W1 series. The arguments advanced by learned counsel on other side were heard.

5. The Point for my consideration is—

“Whether the action of the Management of Superintendent of Post Offices, Kumbakonam Division, Kumbakonam in removing from services of Sri V. Arunachalam, Ex-department Sub Postmaster, Vishnupuram from 26-11-1999 is justified? If not, to what relief the workman is entitled?”

Point :—

The Petitioner was working as ED Sub-Postmaster, Vishnupuram, was issued a charge memo dated 21-3-97 containing three articles of charges, a xerox copy of the same is Ex. M1. Under those charges, the Petitioner was said to have committed acts of misconduct in violation of Rule 17 of P & T EDA's (C & S) Rules, 1964. It is alleged in the charge sheet that the Petitioner was found keeping shortage of cash of Rs. 3747.35 committed acts of fraud in R.D. accounts and non-entrustment of money orders to EDDA received for payment on 9-1-97. A departmental enquiry was conducted and the daily order sheet maintained by the Enquiry Officer for the enquiry is Ex. M4/W1 series. On conclusion of the enquiry, the Enquiry Officer has submitted his report Ex. M2 (xerox copy) giving a finding that the charges are stand proved. Based on the report and finding of the Enquiry Officer under original of Ex.M2, the Superintendent of Post Offices, Kumbakonam, the Disciplinary Authority has passed an order dated 26-7-99 imposing punishment against the Petitioner of removal from service.

6. Aggrieved by that order passed by the Disciplinary Authority by removing from service, the Petitioner has raised this industrial dispute alleging that the domestic enquiry was conducted in contravention of rules and law and the Petitioner as a charge sheeted employee was denied reasonable opportunity which is a violation of principles of natural justice and hence the entire enquiry proceedings is vitiated. The learned counsel for the Petitioner has argued that the first charge is with regard to shortage of cash and stamp balances by Rs. 3747.35 found by the verifying officer on 9-1-97. In that charge out of the total shortage amount of Rs. 3747.35 what was that cash shortage and what was the stamp shortage has not

been stated. The Petitioner who was in serve at the time of verification as EDSBA, Vishnupuram had admitted the shortage at the time of verification. The learned counsel for the Petitioner would argue that the verification was done at the close of office hours at 14.30 hrs and as per the Rule, the Petitioner is permitted to keep the cash in a safe place and he can produce the same for inspection within the time required to going to and coming back to the place where the cash is kept for safe custody. So the non-availability of the cash at the time of verification by the verifying officer cannot by itself be considered as the misconduct committed by the Petitioner. It is seen from records that copies of the documents mentioned in Annexure III to the charge sheet have not been furnished to the Petitioner, delinquent employee. The Enquiry Officer in the daily order sheet dated 14-7-97 has stated that since the charge sheeted official has denied all the three charges levelled against him in total the enquiry in this case would pass on to next stage for perusal of documents which will be intimated in due course. This shows copies of the documents relied upon by the Management to prove the charges levelled against the delinquent official were not furnished to him along with the charge sheet. In the charge sheet Ex. M1 it is stated that the delinquent official is directed to submit within ten days of that memorandum his written statement of defence. This reveals that the delinquent official, the petitioner herein was directed to submit his reply without even furnishing the copies of the documents mentioned in the Annexure III of the Charge Sheet. So as it is put forth by the learned counsel for I Party/Petitioner, the non-furnishing of copies of documents relied upon by the Respondent/management even to frame the charges against the Petitioner and to direct him to submit his written explanation for the charge memo amounts to denial of reasonable opportunity to put forth the petitioner's defence effectively. Since the domestic enquiry is started with the issuance of charge memo, this action of the management amounts to violation of principles of natural justice. In the daily order sheet maintained by the Enquiry Officer for the dated 19-8-97, it is stated that the xerox copy of certain documents as statements of witnesses were handed over to the charge sheeted official and out of total number of 32 documents mentioned in Annexure II to the Charge sheet, xerox copies of 15 documents were furnished to the Petitioner on that day. It is also stated in that daily order sheet that Presenting Officer has been directed to obtain serial number 18 of Annexure II in the charge sheet and keep ready. So it is seen from the particulars available in records that before ever the enquiry has begun the copies of documents relied upon by the Respondent/Management were not furnished to the charge sheeted official. Under Miscellaneous Rule 11 a Note has been given as follows :—

“All EDDPMs whether their offices are provided with iron safes or not should make their own arrangements for the safe custody of cash and valuables on their own responsibility. They are at liberty to keep the cash and valuables wherever they like, provided that they are available when required and that when called for. They can be produced for inspection within the time required for going to and coming back when the place where the cash is kept for safe custody.”

In this case, the charge sheeted official had admitted the shortage before the verifying officer and the verification has been done after the close of the office hours and the shortage amount has been remitted back. From the enabling provision, it is seen that the charge sheeted official was at liberty to keep the cash for safe custody at the place he likes. It is not in record that the said charge sheeted official was given reasonable time for production of that shortage of cash and in spite of that charge sheeted official was not able to produce the same before the verifying officer. So under such circumstances, in the absence of any clinching evidence it cannot be said that the charge no. 1 has been proved to conclude that the charged official has contravened the provision of Rule 17 of ED Agents (Conduct and Service) Rules, 1964.

7. It is seen from the records that with regard to charge no. 2, the concerned depositors Vimala and Sakila were not examined before the Enquiry Officer though their statements were obtained in the absence of the charged official, the Petitioner herein and used in the enquiry by the management to prove the said charge. The deponents had not been subjected to cross examination by the charged official. But the Enquiry Officer relied upon those statements to conclude that the said charge has been proved. From this, it is seen the charged official, the petitioner herein, was denied an opportunity to cross examine those persons. It is also seen from the materials available in this case that the preliminary enquiry report has not been furnished to the delinquent charged official. With regard to the next charge, the EDDA Sri Swaminathan, who had given a statement has not been examined before the Enquiry Officer. It is also seen from the Enquiry Officer's proceedings that the payees have stated before the Enquiry Officer that they are informed about the arrival of Money Orders. If the M.O. amount is more than Rs. 500 the Branch Postmaster should not serve it through EDDA. Intimation can be given to the payees about the arrival of the M.Os. through EDDA. It is available in evidence that one such intimation was given and the payee had taken the amounts on 10-1-87. So under such circumstances, it is not correct to conclude that article No. 3 mentioned in the charge sheet has been proved. So from the available records, it is seen that all the three articles of charges were not proved with

substantive, acceptable evidence. There is no evidence that this Petitioner, charged official has failed in his duty. So, the finding of the Enquiry Officer in his report that all the three charges have been proved is incorrect. Consequently, the punishment imposed by the Disciplinary Authority on the basis of the report and findings of the Enquiry Officer is unjustified. It is not the case of the Respondent that the Petitioner ever maintained false record or fabricated the documents or misappropriated any amount. Under such circumstances, it can be held that the action of the management, the Respondent, Superintendent of Post Offices, Kumbakonam Division, Kumbakonam, in removing from the services of Shri V. Arunachalam Ex. Department Sub Postmaster, Vishnupuram from 26-11-99 is unjustified. hence, the concerned workman is entitled to the relief, he prayed for in this Claim Statement. Thus, I answer the point accordingly.

8. In the result, an award is passed holding that the action of the Management in removing Shri V. Arunachalam, Ex. Department Sub Postmaster, Vishnupuram from service on 26-11-99 is unjustified. The II Party/management is directed to reinstate the I Party/Workman Concerned Sri V. Arunachalam in service as before with all attendant wages and monetary benefits. No. Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th June, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witness Examined :—

On either side : NONE

Documents Marked :—

For I Party/Claimant :

Ex. No.	Date	Description
W1 series	26-05-98 to 22-05-99	Xerox copy of Daily Order Sheet 12 in numbers.

For II Party/Management :

M1	21-03-97	Xerox copy of the Charge Sheet.
M2	17-07-99	Xerox copy of the Enquiry Officer's report
M3	26-11-99	Xerox copy of the proceedings of the Superintendent of Post Offices, Kumbakonam Division.
M4 Series	14-07-97 to 22-05-99	Xerox copy of Daily Order Sheets 32 in Numbers (pages 1 to 77)

नई दिल्ली, 2 जुलाई, 2001

AWARD

का. आ. 1851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेंडेंट ऑफ पोस्ट ऑफिसों के प्रबंधन के संबंध में निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-40011/6/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1851.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Senior Superintendent of Post Offices and their workman, which was received by the Central Government on 2-7-2001.

[No. L-40011/6/2000-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 6th June, 2001

Present : K. KARTHIKEYAN,
Presiding Officer.

INDUSTRIAL DISPUTE NO. 375/2001

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri P. Duraisamy and the Management, Senior Superintendent of Post Offices, Tiruchirappally Division]

BETWEEN

P. Duraisamy I Party/Workman

AND

The Senior Superintendent of, II Party/
Post Offices, Tiruchirappally Management
Division

APPEARANCE :

For the Workman : M/s. S. Jyothivani
and R. Balagurusamy,
Advocates

For the Management : Mr. M.K. Jayakaran
Ad. CGSC

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide Order No. L-40011/6/2000-IR (DU), dated 07-07-2000 :—

“Whether the action of the Management of Senior Superintendent of Post Offices, Hyderabad City Division, Hyderabad and Senior Superintendent of Post Offices, Trichy Division, Tiruchirappally in removing services of Shri P. Duraisamy from the Ex-BPM is justified? If not, to what relief the concerned workman is entitled?”

This order of reference was originally made to CGIT, Bangalore for adjudication. Subsequently, by order dated 7-12-2000, the Govt. of India, Ministry of Labour was pleased to withdraw this case from the file of CGIT, Bangalore and transfer this industrial dispute to the file of this Tribunal for adjudication. On receipt of records from that Tribunal the case was taken on file as I.D. No. 375/2001 on 24-1-2001 and notices were sent to both the parties by Registered Post informing them about the transfer of this case from the file of CGIT, Bangalore to this Tribunal, with a direction to appear before this Tribunal on 19-2-2001. On 19-2-2001, though the notice sent by Registered Post was served on the I Party/Workman, he was not appeared. His counsel filed vakalat and prayed time for filing Claim Statement with documents. The II Party was represented by the Additional Central Govt. Standing Counsel Shri M.K. Jayakaran by filing memo of appearance. The case was adjourned to 13-3-2001 for the I Party to file Claim Statement. Then on the request of the counsel for the I Party, the case was adjourned to 26-3-2001 and then to 18-4-2001 for filing Claim Statement. On 18-4-2001, the I Party/Workman filed his Claim Statement and the case was adjourned to 03-05-2001 for the II Party to file the Counter Statement. Though the case was adjourned to 21-05-2001, 31-5-2001 from 3-5-2001 extending the time for the II Party to file the Counter Statement, there was no representation at all for the II Party on those hearings. When the matter was taken up on 31-5-2001, the counsel for the I Party and the I Party were only present. The II Party and their counsel were not present and there was no representation on the side of the II Party. Counter Statement of the II Party has not been filed. So the II Party was said ex-parte and the case was adjourned to 1-6-2001, on the request of the counsel for the I Party for ex-parte evidence. On 1-6-2001, the I Party/Workman was examined as WW1 and Ex. W1 to W4 were marked. Then the case was adjourned to 6-6-2001 for this Tribunal to pass a considered order on the basis of the materials on record and the ex-parte evidence given by the I Party/Workman.

2. The averments of the I Party/Workman in his Claim Statement are briefly as follows :—

The I Party/Workman (hereinafter referred to as Petitioner) was appointed as Extra Departmental Branch Postmaster, Pilimaisai B.O. in the year 1992 by the II Party/Management (hereinafter referred to as Respondent). The Respondent is the appointing authority as well as the Disciplinary Authority. The Petitioner was rendering his services to the entire satisfaction of his superiors without any blemish and that at no point of time the Petitioner has come to the adverse notice of his superiors except the one against which the present claim petition is filed. The Petitioner was issued with the charge memo dated 3-7-91 containing three articles of charges, wherein it is alleged that the Petitioner failed to account for the deposit of Rs. 45/- on 17-3-90, Rs. 65/- on 27-3-90 and Rs. 140/- on 22-6-90 accepted from the depositor of S.B. account No. 605048 and that he belatedly credited those deposited amounts into the B.O. accounts and that he had failed to account for Rs. 100/- accepted from the depositor of S.B. Account No. 605775 during the first week of March, 1990 and also failed to account for the withdrawal of Rs. 100/- on 13-3-90 into B.O. accounts and that he had failed to account for the deposit of Rs. 25/- received from the depositor of S.B. account No. 6057 into accounts and on 28-4-90, he credited the amount into the accounts and thereby he failed to maintain absolute integrity and devotion to duty and failed to follow the provisions of Rule 17 of P & T, Extra Departmental Agent (C & S) Rules, 1964. The Respondent cited 27 documents in the annexure of Charge Sheet and cited 5 witnesses by whom the articles of charges framed are proposed to be sustained. The Petitioner denied the charges one Shri S. Sridharan, ASP was appointed as Enquiry Officer at the first instance. Subsequently, from time to time, the Enquiry Officer appointed was changed by the Respondent. The delay in appointment of Enquiry Officer resulted in delay in finalising the disciplinary proceedings for more than 8 years and the delay is fatal and made the proceedings vitiated as per the exhaustive guidelines and as per the principles of natural justice. The Enquiry Officer conducted several sittings violating the principles of natural justice and the procedure known to conduct of the disciplinary proceedings and gave a perverse finding holding that the charges against the Petitioner are proved. The ad-hoc Disciplinary Authority the Senior Superintendent of Post Offices, Hyderabad was without any application of mind and on illegal and arbitrary exercise of powers, imposed the punishment of removal from service which is a major punishment. Aggrieved by the order of removal from service, the Petitioner raised an industrial dispute under section 2A of the Industrial Disputes Act before the Conciliation Officer. The conciliation proceedings ended in a failure. On submission of the report of failure of conciliation by the conciliating authority to the Govt., the Govt. was pleased to refer this matter as an

Industrial dispute to the Tribunal for adjudication. The Respondent have disregarded the proper procedure in conducting the enquiry proceedings, which resulted in denial of reasonable opportunity to the Petitioner to defend his case and it is a violation of principles of natural justice. The Respondent, though had cited 27 documents, the copies of the said documents were not given to the Petitioner along with the charge sheet. Instructions were given by the department under letter dated 19-6-87 that copies of documents relied upon and the statements of witnesses cited, be supplied to the Govt. servant along with the charge sheet. But the Respondent had over looked the instructions, which caused prejudice to the Petitioner in defending his case effectively and it is a violation of principles of natural justice. For the non-furnishing of documents relied upon by the Management for the charges, the Petitioner was not able to give his explanation to the charge sheet in an effective manner. So it is a violation of principles of natural justice. The investigating officer had obtained statements from the witnesses during the fact finding enquiry behind the back of the I Party. The statements of witnesses of A. Chinmasamy, M. Ilanchezhian, Smt. Indirani and M. Tamilazahan dated 25-4-90 were marked as exhibits P4, P5, P6, P18, P20 and P25. In the enquiry the witness Mr. Ilanchezhian had not been examined, but his statement was produced and the Enquiry Officer relied on the statement also. Instructions were already given by the Ministry of Home Affairs to the effect that evidence of witness which are going to be used against the Govt. servant in departmental proceedings should be recorded in his presence. The evidence recorded in the fact finding enquiry shall not be produced during the enquiry, since it was obtained behind the back of the Govt. servant. As such statements dated 25-4-90 obtained from the witnesses during the preliminary investigation in the absence of the Petitioner, ought not have been brought into the proceedings in the absence of the author of those documents. But the Enquiry Officer admitted those documents in the proceedings and based his reliance for giving his findings. It shows the illegal, arbitrary exercise of powers by the Enquiry Officer without application of mind with a motive to hold the charges as proved. The ad-hoc Disciplinary Authority without application of mind accepted the finding of the Enquiry Officer as charges have been proved and had imposed the punishment of removing from service. This is a case of no evidence. The witnesses examined before the Enquiry Officer about their statements given before the preliminary investigation officer were disowned their statements. Those statements were obtained from them by persuasion and giving false promises. There was no complaint against the petitioner. The material collected during the preliminary enquiry were not substantiated during the departmental proceedings. The charges levelled against the petitioner are baseless and without any evidence. The Disciplinary Authority based on his reliance on the enquiry report, held, that the

applicant is guilty and imposed punishment of removal from service without application of mind. It is illegal, arbitrary and colourful exercise of powers. Hence, the penalty imposed by the Disciplinary Authority against the Petitioner is to be set aside and the Respondent is to be directed to reinstate the Petitioner in service in the post he was holding as Extra Departmental Branch Postmaster, Pilimisai (B.O.) Tiruchirappalli Division with all attendant and monetary benefits.

3. When the matter was taken up for enquiry on 1-6-2001, subsequent to settling the respondent ex-parte in the previous hearing, the Petitioner was examined himself as WW1 and Ex. W1 to W4 were marked. On the representation of the counsel for the Petitioner that the Petitioner has no more oral or documentary evidence and closing his side, the argument advanced by learned counsel for the Petitioner was heard and the case was posted to this date for passing an order on consideration.

4. The point for my consideration is—

“Whether the action of the Management of Senior Superintendent of Post Offices, Hyderabad City Division, Hyderabad and Senior Superintendent of Post Offices, Trichy Division, Tiruchirappalli in removing the from services of Shri P. Duraisamy from the Ex-BPM is justified? If not, to what relief the concerned workman is entitled?”

Point :— It is admitted in evidence by the Petitioner as WW1 that he joined as Branch Postmaster at Pilimisai in Trichy Division in the year 1990. It is his evidence that when he was doing his service as such he was given a chargesheet dated 3.7.91 and the xerox copy of the same is Ex.W1. Though he has stated that he has submitted explanation as a reply denying those charges, he has not chosen to file a copy of that reply here in Court. It is his admission that he had taken part in the enquiry fully and he was assisted by one Defence Assistant by name Shri N.T. Rajan. It is also his evidence that the entire enquiry proceedings were recorded by the Enquiry Officer in his presence and that in the enquiry Mr. M.Paramasivam, who had conducted the preliminary enquiry was examined as PW1. The other witnesses examined on the side of the Management in the enquiry had deposed that they have not given statements before the investigating officer willingly and those statements were obtained from them under compulsion.

The Petitioner further says that when he was examined before the Enquiry Officer he denied the charges and he examined one Sri Kasi Rajan as his defence witness. The xerox copy of enquiry proceedings is Ex.W2 and the Enquiry Officer's report is Ex.W3. The order passed by the Disciplinary Authority dated 28.8.99 (Xerox copy) is exhibit W4. It is the further evidence of WW1 that the charges levelled against him are false and there was no supportive

evidence in the enquiry to prove the charges levelled against him and that the enquiry officer has given a finding that the charges are proved without any evidence of proof and that the Disciplinary Authority also relied upon the report of the Enquiry Officer and awarded the punishment of removing him from service and it is against the principles of natural justice and it is illegal.

5. A perusal of the charge memo Ex.W1 clearly shows that specific acts of misconduct as receipt of deposits, from the Savings Bank account holders, on different dates and belated credit made by this Petitioner in those S.B. accounts. All the documents that were relied upon to prove this three articles of charges mentioned in the charge memo have been mentioned in the list of documents annexed to the charge sheet as Annexure III. It is seen from the enquiry proceedings marked as Ex.W2, that sufficient opportunity was given to the Petitioner, the delinquent employee and he was taken part in the entire enquiry along with his defence assistant and has cross examined the witnesses examined on the side of the Management in detail. A perusal of the enquiry of such proceedings clearly show as and when some objection has been raised by the defence representative about the procedural aspect adopted by the Enquiry Officer rulings in respect of those objections were given by the Enquiry Officer giving acceptable reasons for his rulings. This clearly shows that the delinquent employee with his defence representative were given sufficient and proper opportunity to effectively defend the charges levelled against the Petitioner/delinquent employee. Though the witnesses examined on the side of Management have stated that they have not voluntarily given the statements before the investigating officer PW1 when questions were put to them about the deposits they made towards the respective Savings Bank Accounts to the delinquent employee, the Branch Postmaster, they do accept the same that they have made such deposits with WW1 and he had failed to credited the same in their account then and there. There are documentary evidence available in this case which would clinchingly prove about the belated credit made by WW1 for the deposit of amount made by the respective Savings Bank Account-holders. The Enquiry Officer in his report Ex.W3, after analyzing the evidence of oral and documentary in detail, had come to the conclusion that the charges levelled against the delinquent employee, the Petitioner herein have been proved. He has also given reasoning in his findings to conclude that the charges were proved. So, under such circumstances, it cannot be said that the findings of the Enquiry Officer are without any evidence or basis and it is perverse. So, the argument advanced by the learned counsel for the Petitioner that the Enquiry Officer has given his finding without any basis and evidence and it is perverse cannot be accepted as correct. A perusal of the order passed by the Disciplinary Authority Ex.W4, clearly shows that the Enquiry Officer's

report was duly considered by the Disciplinary Authority and he has discussed about the same in detail and he had found that the findings given by the Enquiry Officer in his report as charges have been proved are correct and accepted. So, under such circumstances, the argument advanced by the learned counsel for the Petitioner that the Disciplinary Authority, while passing the order of penalty against the delinquent employee for removal from service is without application of mind, cannot be accepted as correct. In his order Ex. W4, the Disciplinary Authority has clearly stated that the penalty imposed against the delinquent employee as removal from service shall not be a disqualification for future employment. From this, it is seen that the penalty imposed against the Petitioner is not in any way affecting his future in securing fresh employment as a disqualification. So under such circumstances, I come to the conclusion that the action of the Management, the II Party in this dispute against the I Party/Petitioner taken in the disciplinary proceedings by imposing the penalty is justified and the concerned workman, the Petitioner herein is not entitled to any relief. Thus, I answer the point accordingly.

6. In the result, it is held that the claim of the I Party is not proved to set aside the order of removal from service issued by the II Party/Management. Accordingly, an award is passed as a considered one holding that the I Party/Petitioner's dismissal from service by the authorities is based on acceptable evidence and materials only as found out by the Enquiry Officer and hence, the I Party/Workman is not entitled to any relief, since the action of the Management concerned in removing the Petitioner Shri P. Duraisamy from the service of Ex.PBM is justified. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day die the 6th June, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman :

W. W. 1 : Shri P. Duraisamy

For the II Party/Management :

None

Documents Marked :—

For the I Party/Workman :

Ex. No.	Date	Description
W 1	03-07-91	Xerox copy of Memo No. F. IV/1/Misc/90-91 from Shri Sivachandramoorthy, Sr. Superintendent, Trichy to Sri P. Duraisamy.

Ex. No.	Date	Description
W 2	05-05-99	Xerox copy of brief of the defence submitted to the Enquiry Officer in the disciplinary proceedings.
W 3	11-05-99	Xerox copy of enquiry report of the Enquiry Officer.
W 4	28-09-99	Xerox copy of Memo/Order No. SSP/HD city/CON/99 of the Disciplinary Authority.

For the II Party/Management : NIL

नई दिल्ली, 2 जुलाई, 2001

का. आ. 1852.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/7/2001-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1852.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/7/2001-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAM.

PRESENT: Sri K. Veerapu Naidu, B. Sc., B. L.,
Chairman and Presiding Officer.

Dated : 1st day of June, 2001

I.T.I.D(C) 55/99

BETWEEN

Madaka Srinivasa Rao.
S/o Apparao,
C/o S. Gangadhara Reddy,
D. No. 9-1-75/1, New Resapuvanipalem,
Opp : Indore Stadium
Visakhapatnam-13

Workman

1. The Flag Officer,
Commanding-in-chief for CSOC (P&A),
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virebahu, Samudrika,
Naval Auditorium, Naval Base,
Visakhapatnam.

AWARD

2. The case of the petitioner is that he was appointed as safaiwala in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 28-3-95 and he worked as such till 30-4-99, and he was paid Rs. 683/- per month. He was working for 8 hrs. for a day for 26 days in a month. He was not paid minimum wages and hence the workers union filed M.W. 104/95 before the Authority i.e. Asstt. Commissioner of Labour, Circle-II Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97 questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.c.f. 30-4-99 without assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrike Naval Auditorium and also the non-public fund.

4. The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture cum assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's for conducting symposium and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in a very stress

5. It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture cum assembly demonstration by senior defence officers, seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable T.V. the samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the samudrika Non-Public Fund, the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

6. The workman is examined as WW1 and the General Secretary of the union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

7. Heard both sides.

8. The point arises for consideration in this application is:

Where the petitioner is entitled for reinstatement with back wages ?

9. The counsel appearing for the workman contends that the petitioners was appointed as Safaiwala on 28-3-95 and he was paid Rs. 683/- per month and that he worked continuously till his services are terminated w.e.f. 30th April.

1999. He was serving as safaiwala in the Samudrika Auditorium maintained by respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers union as WW 1 and 2. It is also contended by the workman that the workers have raised a dispute before the Asstt. Commissioner of Labour (Central) whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing the general secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

10. The council appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meeting to be organised by the defence personnel screening of films for the entertainment of the officers, sailors and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying same honorarium to the workers from the non public funds. Exs. M3 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non-public fund and it has no connection with the Navy nor with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M5. The services of the workmen are terminated on the basis of the letter received from the Flag Officer Commanding-in-Chief which is marked as Ex. M3 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted about the filing of the case under Minimum wages Act by the workers union and their success and against which, the management filed a write petition No. 15863/97 where in an interim direction was given to deposit Rs. 34,729/- and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum Wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether the termination of the petitioner's services is legal?

11. The evidence adduced by both the parties discloses that the wages are being paid to the workman from non-public fund which is being raised by the members of the Naval Officers, sailors etc. and the services of the petitioner was taken only in the Auditorium for screening

of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 4 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminar, etc. by the defence personnel and the screen of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non-public fund and the advent of cable T. Vs. the management was constrained to close the screening of the films in the auditorium. However, the workmen complained that it is a vindictive attitude of the management because they approached the authorities under the minimum wages Act. The case of the management is that paucity of funds from the non-public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika auditorium is discontinued. Therefore, services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

12. Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147-1998(6) ALD 527 wherein his Lordship was pleased to held that two conditions are co-existent to grant the relief of regularisation or continuation of services (1) entry of the employee on temporary or adhoc basis should be against an existing vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are follows:-

- (1) 1996(XI) SCC 341 between Union of India Vs. Bisambar Dutt.
- (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
- (3) P. Ravindra Vs. Union Territory of Pondichery 1997(1) SCC 350
- (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

13. Here in this case the appointment of the petitioner is not existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

14. Thus, here this is a case, where the termination of the services of dismanagement of the petitioner is only on

account of the closure of the according of films in the auditorium. No doubt MW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even other wise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

15. That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in the application.

16. In the result, the petition is dismissed and all award is passed. However, each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer
Appendix of Evidence witnesses examined for

Workmen

Management

WW1 M. Srinivasa Rao.

MW1 S. P. Mallick

WW2 S. Srinivasa Rao.

Document marked for workman :

Ex. W1 30-4-1999 Telegram addressed to Management by Sri S. Gangadham Reddy, Advocate on behalf of the Union.

Ex. W2 5-1999 letter addressed to Assistant Commissioner of Labour Visakhapatnam by the Union.

Ex. W3 22-6-1999 letter addressed to the Union by the ACL.

Ex. W4 20-4-1997 order in MW case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act. 1948 Visakhapatnam.

Ex. W5 Telegram addressed to management by the High Court in WP/P No. 158/98 in WP No. 140/98.

Documents marked for Management :

Ex. M1 28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2).

Ex. M2 3-12-1992 Visakha General Order No. 33/92 Command Lecture-cum-Assembly Hall-Samudrika.

Ex. M3 Balance sheet and audit report for the quarter ending 31st July, 1998.

Ex. M4 Balance sheet and audit certificate for the quarter ending 31st January, 2000.

Ex. M5 5-5-1997 Balance sheet and audit report for the quarter ending 30th April, 1997.

Ex. M6 10-3-1999 Memorandum of agreement for security cover.

Ex. M7 30-4-1999 Termination notice.

Ex. M8 29-4-1999 Letter addressed to R2 by R1.

Ex. M9 30-4-1999 Termination Order of the petitioner.

Ex. M10 17-5-1999 Letter addressed to Assistant Commissioner of Labour by the Management.

नई दिल्ली, 2 जुलाई, 2001

का०आ० 1853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, विशाखापटनम् के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/8/2001-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Ministry of Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/8/2001-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT: VISAKHAPATNAMPRESENT: Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 1st Day of June, 2001

I.T.I.D. (C) 56/99

BETWEEN:

A. Ananda Babu.

S/o Narayan Murtthy

C/o S. Gangadhare Reddy

D. No. 9-1-75/1, New Resapuvanipalem,

Opp : Indore Stadium,

Visakhapatnam-13.

Workman.

AND

1. The Flag Officer,
Commanding in Chief for CSOC (P & A),
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virabahu, Samudrika Naval Auditorium,
Naval Base, Visakhapatnam. Management.

This dispute coming on for final hearing before me in the presence of Sri S.G. Reddy, advocate for workman and the Government Pleader for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A (2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as safaiwala in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 4-1-92 and he worked as such till 30-4-99 and he was paid 683 per month. He was working for 8 hrs for a day for 26 days in a month. He was not paid minimum wages and hence the workers union filed M.W. 104/95 before the Authority i.e., Asst. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97, questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim order not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99, without assigning

any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the non-public fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture-cum-assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the non-public Fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour of the workman and against which the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P. Hyderabad and the Hon'ble Court has granted stay orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129 and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129 on 18-5-99

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture-cum-assembly demonstration by senior Defence Officers, seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non-public fund the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services

are to be discontinued and there was no need for his service. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officers, Naval command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is :

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as safaiwala on 4-1-92 and he was paid Rs. 683 per month and that he worked continuously till his services are terminated w.e.f. 30th April, 1999. He was serving as safaiwala in the Samudrika Auditorium maintained by Respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers' union as WWs 1 and 2. It is also contended by the workmen that the workers have raised a dispute before the Asst. Commissioner of Labour (Central). Where efforts were failed and he advised the union to approach this Tribunal. It is also admitted case of the workman that there is no appointment order in writing, the general secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M17.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, Seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officers, sailors, and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non-public funds, Exs. M3 to M5 are the balance sheets and the audit reports for the years ending 1 July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non-public fund and it has no connection with the Navy nor with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received from the Flag Officer Commanding-in-Chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As

per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filling of the case under Minimum Wages Act by the workers' union and their success and against which, the management filed a writ petition No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729 and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether to terminations of the petitioner's services is legal?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workmen from non-public fund which is being raised by the members of the Naval Officers, sailors etc., and the service of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 7 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc., by defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non-public fund and the advent of cable, T.Vs. the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the non-public fund for the maintenance of the auditorium and secondly, due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

(12) Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147=1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are co-existent to grant the relief of regularisation or continuation of services : (1) Entry of an employee on temporary or ad hoc basis should be against an existing vacancy. (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996(II) SCC 341 between Union of India, Vs. Bisembar Dutt.
 (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
 (3) P. Revindra Vs. Union Territory of Pondicheri 1997(1) SCC 350.
 (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointment of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of His services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apt, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own cost.

Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer

Appendix of Evidence
 Witnesses examined for

Workman :

WW1 A. Ananda Babu
 WW2 S. Srinivasa Rao

Management :

MW1 S.P. Mallick

Documents marked for workman :

- Ex. W1 30-4-99 Telegram addressed to Management by Sri S. Gangadhara Reddy, Advocate on behalf of the Union.
 Ex. W2 05-1999 Letter addressed to Assistant Commissioner of Labour, Visakhapatnam by the Union.
 Ex. W3 22-6-1999 Letter Addressed to the Union by the ACL.

Ex. W4 20-4-1997 Order in MW case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act 1948 Visakhapatnam.

Ex. W5 Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

- Ex. M1 28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2).
 Ex. M2 03-12-1992 Visakha General Order No. 33/92 Command Lecture-cum Assembly Hall-Semudrika
 Ex. M3 Balance Sheet and audit report for the quarter ending 31st July, 1998.
 Ex. M4 Balance Sheet and audit certificate for quarter ending 31st January, 2000.
 Ex. M5 5-5-1997 Balance Sheet and audit report for the quarter ending 30th April, 1997.
 Ex. M6 10-3-1999 Memorandum of agreement for security cover
 Ex. M7 30-4-1999 Termination Order.
 Ex. M8 29-4-1999 Letter addressed to R2 by R1.
 Ex. M9 30-4-1999 Termination Order of the petitioner.
 Ex. M10 17-5-1999 Letter addressed to Assistant Commissioner of Labour by the management.

नई दिल्ली, 2 जुलाई, 2001

का०आ० 1854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अप्रबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/9/2001-आई.आर.(डी-यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-140025/9/2001-IR(D-U)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT: VISAKHAPATNAM

Present Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 1st Day of June, 2001

I.T.I.D. (C) 57/99

Between :

G. Sriramulu

S/o Rama Murthy,

C/o Gangadhare Reddy.

D. No. 9-1-75/1, Now Resapurvanipalem,

Opp : Indore Stadium,

Visakhapatnam-13.

Workman

And

1. The Flag Officer,
Commanding in Chief for CSOC (P & A),
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virabahu, Samudrika Naval Auditorium,
Naval Base, Visakhapatnam. ..Management

This dispute coming on for final hearing before me in the presence of Sri S.G. Roddy, advocate for workman and the Government Pleader for management, Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

Award

(1) This is an application filed under Sec. 2A (2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Ushor in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 1-7-87 and he worked as such till 30-4-99 and he was paid 735 per month. He was working for 8 hrs for a day for 26 days in a month. He was not paid minimum wages and hence the workmens union filed M.W. 104/95 before the Authority i.e., Asst. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97, questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim order not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99, without assigning

any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the non-public fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture cum assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non-public Fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour of the workmen and against which the respondent have filed w.p. No. 15863/97 in the Hon'ble High Court of A.P. Hyderabad and the Hon'ble Court has granted stay orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129/- and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129 on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture-cum assembly demonstration by senior defence officers, seminars, presentations and Cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non-public fund the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a

specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the general secretary of the union is examined as WW2 and got worked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is :

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workmen contends that the petitioner was appointed as usher on 1-7-87 and he was paid Rs. 735/- per month and that he worked continuously till his services are terminated w.e.f. 30th April, 1999. He was serving as usher in the Samudrika Auditorium maintained by Respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers union as WW 1 and 2. It is also contended by the workmen that the workers have raised a dispute before the Asstt. Commissioner of Labour (Central) Whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the general secretary Srinivasa has got an appointment order which is also marked as ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meetings to be organised by the defence personnel, screening of films for the entertainment of the officers, sailors, and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non public funds. Exs. M3 to M5 are the balance sheets and the audit reports for the year ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non public fund and it has no connection with the Navy now with the Government and the Auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received from the flag officer Commanding-in-Chief which is marked

as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filing of the case under minimum wages Act by the workers union and their success and against which, the management filed a writ petition No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729/—and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under minimum wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether the termination of the petitioner's services is legal ?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workmen from non public fund which is being raised by the members of the Naval Officers, sailors etc., and the services of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 12 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non public fund and the advent of the cable T.V.s the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the non public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

(12) Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147=1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are co-existent to grant the relief of regularisation or continuation of services : (1) Entry of an employee on temporary or adhoc basis should be against an existing vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The

above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996(II) SCC 341 between Union of India, Vs. Bisamber Dutt.
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- (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer.

Appendix of Evidence
Witnesses examined for

Workman :

WW 1 G. Sriramulu
WW 2 S. Srinivasa Rao.

Management :

MW1 S.P. Malick.

Documents marked for workman :

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Ex. W5 Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

Ex. M1 28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2)

Ex. M2 03-12-1992 Visakha General Order No. 33/92 Command Lecture-cum Assembly Hall-Samudrika

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Ex. M6 10-3-1999 Memorandum of agreement for security cover.

Ex. M7 30-4-1999 Termination Order.

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Ex. M9 30-4-1999 Termination Order of the petitioner

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नई दिल्ली, 2 जुलाई, 2001

का० आ० 1855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, रक्षा मंत्रालय के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/10/2001-आई.आर.(डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S. O. 1855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/10/2001-IR(DU)]

KULDEEP RAI VERMA, Desk Officer

30th April, 1999. He was serving as Booking Clerk in the Samudrika Auditorium maintained by Respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers union as WW 1 and 2. It is also contended by the workmen that the workers have raised a dispute before the Asst. Commissioner of Labour (Central) where efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing; the General Secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officer, sailors, and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workman from the Non-public Funds. Exs. M3 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the Non-public Fund and it has no connection with the Navy now with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received

of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 12 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the Non-public Fund and the advent of cable T. Vs. the management was constrained to close the screening of the films in the auditorium. However, the workmen complained that it is vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the Non-public Fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

12. Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147-1998(6) ALD 327 wherein his Lordship was pleased to hold that two conditions are so existent to grant the relief of regularisation or continuation of services: (1) Entry of an employee on temporary or adhoc basis should be against an existing vacancy. (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAMPresents : Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 1st Day of June, 2001

I.T.I.D. No. (C) 58/99

Between :

Karri Appala Raju,

S/o Late Apparao

C/o S. Gangadhara Reddy

D. No. 9-1-75/1, New Resopuvanipalom,

Opp : Indore Stadium,

Visakhapatnam-13.

.....Workman

And

1. The Flag Officer,
Commanding in Chief for CSOC (P & A),
Head Quarteres, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virabahu, Samudrika Naval Auditorium,
Naval Base, Visakhapatnam.Management.

This dispute coming on for final hearing before me in the presence of Sri S. G. Reddy, advocate for workman and the Government Pleader for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the Non-public Fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture cum assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposium and cultural programmes by Naval Personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non-public Fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour to the workman and against which the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P., Hyderabad and the Hon'ble Court has granted Stay Orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129 and the main writ is pending. As per the directions of the High Court, the respondent have to deposit amount of Rs. 36,129 on 18-5-99.

decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996 (II) SCC 341 between Union of India Vs. Bisambar Dutt.
- (2) Ashwani Kumar Vs. State of Bihar 1997 (2) SCC 1.
- (3) P. Ravindra Vs. Union Territory of Pondicherry 1997(1) SCC 350.
- (4) P. Ramakrishna Vs. State of Kerala 1996 (II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on ad-hoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of film in the auditorium. No doubt, WW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That part, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workmen. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer

Appendix of Evidence

Witnesses Examined for

Workman

WW1 K. Appala Raju

WW2 S. Srinivasa Rao.

Management :

MW1 S.P. Mallick

Documents marked for workman :

ExW1 30-4-1999 Telegram addressed to Management by Sri S. Gangadhara Reddy advocate on behalf of the Union.

ExW2 10-5-1999 Letter addressed to Assistant Commissioner of Labour Visakhapatnam by the Union.

ExW3 22-6-1999 Letter addressed to the Union by the ACL.

ExW4 20-4-1997 Order in MW case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act, 1948 Visakhapatnam.

ExW5 Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

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Ex.M2 3-12-1992 Visakha General Order No. 33/92 Command Lecture-cum-Assembly Hall-Samudrikas.

Ex.M3 Balance Sheet and audit report for the quarter ending 31st July, 1998.

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Ex.M7 30-4-1999 Termination Order.

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Ex.M9 30-4-1998 Termination Order of the petitioner.

Ex.M10 17-5-1999 Letter addressed to Assistant Commissioner of Labour by the Management.

नई दिल्ली, 2 जुलाई, 2001

का० आ० 1856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/11/2001-आई.आर.(डी यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi the 2nd July, 2001

S.O. 1856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/11/2001-IR(DU)]

KULDIP RAI VERMA, Desk Officer.

above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

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- (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
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- (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer.

Appendix of Evidence
Witnesses examined for

Workman :

WW 1 G. Sriramulu
WW 2 S. Srinivasa Rao.

Management :

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नई दिल्ली, 2 जुलाई, 2001

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[सं. एल-14025/10/2001-आई.आर. (डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 2nd July, 2001

S. O. 1855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/10/2001-JR(DU)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT: VISAKHAPATNAMPresents : Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 1st Day of June, 2001

I.T.I.D. No. (C) 58/99

Between :

Karri Appala Raju,

S/o Late Apparao

C/o S. Gangadhare Reddy

D. No. 9-1-75/1, New Resopuvanipalom,

Opp : Indore Stadium,

Visakhapatnam-13.

.....Workman.

And

1. The Flag Officer,
Commanding in Chief for CSOC (P & A),
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virabahu, Samudrika Naval Auditorium,
Naval Base, Visakhapatnam.Management.

This dispute coming on for final hearing before me in the presence of Sri S. G. Reddy, advocate for workman and the Government Pleader for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A (2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Booking Clerk in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 1-8-1987 and he worked as such till 30-4-99 and he was paid 735 per month. He was working for 7 hrs. for a day for 26 days in a month. He was not paid minimum wages and hence the workmen's union filed M.W. 104/95 before the Authority i.e., Asstt. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97, questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99, without

assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the Non-public Fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture cum assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposium and cultural programmes by Naval Personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non-public Fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on an ad hoc basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M. W. 104/95 and it was allowed in favour to the workman and against which the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P., Hyderabad and the Hon'ble Court has granted Stay Orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129 and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129 on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailor for lecture cum assembly demonstration by senior defence officers, seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non-Public Fund the screening of movies for the entertainment of troops has been stopped and the Non-Public Fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for

a specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the Union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is:

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as Booking Clerk on 1-8-87 and he was paid Rs. 735 per month and that he worked continuously till his services are terminated w.e.f. 30th April, 1999. He was serving as Booking Clerk in the Samudrika Auditorium maintained by Respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers union as WW 1 and 2. It is also contended by the workmen that the workers have raised a dispute before the Asst. Commissioner of Labour (Central) where efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the General Secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officer, sailors, and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the work as from the Non-public Funds. Exs. M3 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the Non-public Fund and it has no connection with the Navy now with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received

from the Flag Officer Commanding-in-Chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the Administrative Officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filing of the case under Minimum Wages Act by the workers union and their success and against which, the management filed a Writ Petition No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729 and the same was deposited by the Bank draft and Ex. M10 in the letter stating the said fact. So far as the dispute under Minimum Wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioners services are taken on casual basis and if so whether to termination of the petitioner's services legal?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workmen from Non-public Fund which is being raised by the members of the Naval Officers, Sailors etc., and the services of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 12 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the Non-public Fund and the advent of cable T.Vs, the management was constrained to close the screening of the films in the auditorium. However, the workmen complained that it is vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the Non-public Fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

12. Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147-1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are so existent to grant the relief of regularisation or continuation of services: (1) Entry of an employee on temporary or adhoc basis should be against an existing vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said

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(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer

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Witnesses Examined for

Workman

WW1 K. Appala Raju

WW2 S. Srinivasa Rao.

Management :

MW1 S.P. Mallick

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[सं. एल-14025/11/2001-आई.आर. (डी यू.)]

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KULDIP RAI VERMA, Desk Officer.

ANNEXURE
IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAM

PRESENT

Sri K. Veerapu Naidu, B.Sc. B.L.,
 Chairman & Presiding Officer.

Dated 1st day of June, 2001

I.T.I.D. (C) 59/99

BETWEEN

Goddu Appanna,
 S/o Rama Murthy,
 C/o S. Gangadhara Reddy,
 D. No. 9-1-75/1, New Resapuvanipalem,
 Opp : Indore Stadium,
 Visakhapatnam-13. ... Workman

AND

1. The Flag Officer,
 Commanding-in-Chief for CSOC (P & A)
 Head Quarters, Eastern Naval Command,
 Naval Base Port, Visakhapatnam.
2. The Captain,
 INS Virabahu, Samudrika Naval Auditorium,
 Naval Base, Visakhapatnam ... Management

This dispute coming on for final hearing before me in the presence of Sri S.G. Reddy, advocate for workman and the Government Pleader for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Usher in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 11-4-89 and he worked as such till 30-4-99 and he was paid Rs. 735/- per month. He was working for 8 hrs. for a day for 26 days in a month. He was not paid minimum wages and hence the workers union filed M.W. 104/95 before the Authority i.e., Asstt. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97, questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99 without assigning any reasons on the ground that the respondents

have stopped screening of Movies in the Samudrika Naval Auditorium and also the non-public fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture-cum-assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in a very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non-public fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour of the workmen and against which the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P. Hyderabad and the Hon'ble Court has granted Stay Orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129/- and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129/- on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture-cum-assembly demonstration by senior defence officers, seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non-public fund, the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services

are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the Union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is :

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as Usher on 11-4-89 and he was paid Rs. 735/- per month and that he worked continuously till his services are terminated w.e.f. 30th April, 1999. He was serving as Usher in the Samudrika Auditorium maintained by respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workman as well as the General Secretary of the workers union as WWs 1 and 2. It is also contended by the workman that the workers have raised a dispute before the Asstt. Commissioner of Labour (Central) whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the general secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officers, sailors and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non-public funds. Exs. M1 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 30th June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non-public fund and it has no connection with the Navy now with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the

workmen are terminated on the basis of the letter received from the Flag Officer Commanding-in-chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filing of the case under Minimum Wages Act by the workers union and their success and against which, the management filed a writ petition No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729/- and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum Wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether the termination of the petitioner's services is legal?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workman from non-public fund which is being raised by the members of the Naval Officer, Sailors etc. and the services of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 10 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non-public fund and the advent of cable TVs the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of management is that paucity of funds from the non-public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

(12) Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 Others Vs. LIC of India reported in 1998 (6) ALT 147-1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are co-existent to grant the relief of regularisation or continuation of services : (1) Entry of an employee on temporary or adhoc basis should be against an existing

vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The abovesaid decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996(II) SCC 341 between Union of India Vs. Bisamber Dutt.
- (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
- (3) P. Ravindra Vs. Union Territory of Pondicherry 1997(1) SSC 350.
- (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on ad hoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPPU NAIDU,
Presiding Officer.

Appendix of Evidence

Witnesses Examined for

Workman	Management
WW1 G. Appanna	MW1 S.P. Mallick
WW2 S. Srinivasa Rao.	

Documents marked for workman :

Ex W1	30-4-1999 Telegram addressed to Management by Sri S. Gangadhara Reddy, Advocate on behalf of the Union.
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Ex. W2	05-1999 Letter addressed to Assistant Commissioner of Labour, Visakhapatnam by the Union.
Ex. W3	22-6-1999 Letter addressed to the Union by the ACL.
Ex. W4	20-4-1997 Order in MW Case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act, 1948 Visakhapatnam.
Ex. W5	Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

Ex. M1	28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2).
Ex. M2	3-12-1992 Visakha General Order No. 33/92 Command Lecture cum Assembly Hall Samudrika.
Ex. M3	Balance Sheet and audit report for the quarter ending 31st July, 1998
Ex. M4	Balance sheet and audit certificate for quarter ending 31st January, 2000.
Ex. M5	5-5-1997 Balance Sheet and audit report for the quarter ending 30th April, 1997.
Ex. M6	10-3-1999 Memorandum of agreement for security cover.
Ex. M7	30-4-1999 Termination Order.
Ex. M8	29-4-1999 Letter addressed to R2 by R1.
Ex. M9	30-4-1999 Termination order of the petitioner.
Ex. M10	17-5-1999 : Letter addressed to Assistant Commissioner of Labour by the Management.

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1857.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/12/2001-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/12/2001-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, VISAKHAPATNAM

PRESENT

Sri K. Veerapu Naidu, B.Sc. D.L.,
Chairman & Presiding Officer.

Industrial Tribunal-cum-Labour Court,
Visakhapatnam

Dated, 1st day of June, 2001

I.T.D. (C) 60/99

BETWEEN

S. Govinda Rao, S/o Mahalakshami Naidu,
C/o S. Gangadhara Reddy, Advocate,
D. No. 9-1-75/1, New Rosapuvanipalam,
Visakhapatnam-13 ... Workmen.

AND

1. The Flag Officer,
Commanding-in-Chief for CSOC(P&A)
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.
2. The Captain,
INS Virabahu, Samudrika
Naval Auditorium, Naval Base,
Visakhapatnam ... Management.

This dispute coming on for final hearing before me in the presence of Sri S.G. Reddy, advocate for workman and the Government Pleader for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Usher in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 1-8-86 and he worked as such till

30-4-99 and he was paid Rs. 735/- per month. He was working for 8 hrs. for a day for 26 days in a month. He was not paid minimum wages and hence workers union filed M.W. 104/95 before the Authority i.e., Asstt. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97 questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99 without assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the non-public fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workmen is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture-cum-assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in a very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non-public fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. it is true that the union filed M.W. 104/95 and it was allowed in favour of the workmen and against the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P., Hyderabad and the Hon'ble Court has granted Stay Orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129/- and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129/- on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture-cum-assembly demonstration by senior defence officers.

seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non public fund, the screening of movies for the entertainment of troops has been stopped and the non public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the Union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is :

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as Usher on 1-8-86 and he was paid Rs. 735/- per month and that he worked continuously till his services are terminated w.e.f 30th April 1999. He was serving as Usher in the Samudrika Auditorium maintained by respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workman as well as the General Secretary of the workers union as WVs 1 and 2. It is also contended by the workman that the workers have raised a dispute before the Asstt. Commissioner of Labour (Central) whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the general secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

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the lectures, seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officers, sailors and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non public funds. Exs. M1 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non public fund and it has no connection with the Navy nor with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received from the Flag Officer Commanding in chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filing of the case under Minimum Wages Act by the workers union and their success and against which, the management filed a writ petitioner No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729/- and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum Wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether the termination of the petitioner's services is legal?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workman from non public fund which is being raised by the members of the Naval Officer, Sailors etc. and the services of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 13 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non public fund and the advent of cable TVs the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of management is that paucity of funds from the non public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the

Samudrika auditorium is discontinued. Therefore, the service of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be contained in the same post in which he was employed is to be considered.

(12) Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998 (6) ALT 147-1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are co-existent to grant the relief of regularisation or continuation of services : (1) Entry of an employee on temporary or ad hoc basis should be against an existing vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996(II) SCC 341 between Union of India Vs. Bisambar Dutt.
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- (4) P. Ramakrishna Vs. State of Kerala 1996 (II) SC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on ad hoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of his services some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice. to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear

its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VEERAPPUNaidu,

Presiding Officer

Appendix of Evidence

Witnesses Examined for

Workman	Management
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Ex. M8	29-4-1999 Letter addressed to R2 by R1.

Ex.M9 30-4-1999 Termination order of the petitioner.

Ex.M10 17-5-1999 : Letter addressed to Assistant Commissioner of Labour by Management.

नई दिल्ली 2 जुलाई, 2001

का.आ. 1858.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/14/2001-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1858.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001.

[No. L-14025/14/2001-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT: VISAKHAPATNAM

PRESENT

Sri K. Veerapu Naidu, B.Sc. B.L.,
Chairman & Presiding Officer.

Dated : 1st day of June, 2001

I.T.I.D. (C) 62/99

BETWEEN:

Gatta Eswar Rao,
S/o Late Somulu,
C/o S. Gangadhara Reddy, Advocate,
D. No. 9-1-75/1, Near Rosapuvanipalam,
Visakhapatnam-13 ... Workmen.

AND

1. The Flag Officer,
Commanding in Chief for CSOC(P&A)
Head Quarters, Eastern Naval Command,
Naval Base Port, Visakhapatnam.

2. The Captain,
INS Virabahu, Samudrika
Naval Auditorium, Naval Base,
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AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Safaiwala in the Samudrika Naval Auditorium Naval Base, Visakhapatnam on 9-10-1991 and he worked as such till 30-4-99 and he was paid 683 per month. He was working for 8 hrs. for a day for 26 days in a month. He was not paid minimum wages and hence workers union filed M.W. 104/95 before the Authority i.e., Asstt. Commissioner of Labour, Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97 questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99 without assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the non-public fund.

(3) It is the further case of the workman that Samudrika Auditorium is not closed and that the management is vindictive because the union filed a case under Minimum Wages Act. Hence the workmen is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture-cum-assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's, for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in a very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioner and some others were engaged locally and they were paid honorarium as approved by the authorities of the second

respondent organisation. The wages to casual labourers were made from the non-public fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour of the workmen and against which the respondent have filed W.P. No. 15863/97 in the Hon'ble High Court of A.P., Hyderabad and the Hon'ble Court has granted Stay Orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129 and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129/- on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture-cum-assembly demonstration by senior defence officers, seminars, presentations and cultural programmes by Naval Personnel etc. Due to the advent of cable TV, the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika non-public fund, the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disengagement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the Union is examined as WW2 and got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is :

Whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as Safaiwala on 9-10-91 and he was paid 683 per month and that he worked continuously till his services are terminated w.e.f 30th April, 1999. He was serving as Safaiwala in the Samudrika Auditorium maintained by respondents 1 and

2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the services of the petitioner. These facts are stated by both the workman as well as the General Secretary of the workers union as WWs1 and 2. It is also contended by the workman that the workers have raised a dispute before the Asstt. Commissioner of Labour (Central) whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the General Secretary Srinivasa Rao has got an appointment order which is also marked as Ex. M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly meant for the lectures, seminars, meetings to be organised by the defence personnel screening of films for the entertainment of the officers, sailors and children and their family members and the services of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non public funds. Exs. M1 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 30th June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non public fund and it has no connection with the Navy now with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workmen are terminated on the basis of the letter received from the Flag Officer Commanding in Chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination orders to the petitioner. The counsel appearing for the management also admitted the filing of the case under Minimum Wages Act by the workers union and their success and against which, the management filed a writ petitioner No. 15863/97 wherein an interim direction was given to deposit Rs. 34,729 and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum Wages Act is admitted by both the parties. Now the short question for the determination is as to whether the petitioner's services are taken on casual basis and if so whether the termination of the petitioner's services is legal?

(11) The evidence adduced by both the parties discloses that the wages are being paid to the workman from non public fund which is being raised by the members of the Naval Officer, Sailors etc. and the services of the petitioner was taken only in the Auditorium for screening

of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 8 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families. Because of the incurring of losses in the non public fund and the advent of cable TVs the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the non public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

(12) Under the circumstances stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998 (6) ALT 147=1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are coexistent to grant the relief of regularisation or continuation of services : (1) Entry of an employee on temporary or adhoc basis should be against an existing vacancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996(II) SCC 341 between Union of India Vs. Bisamber Dutt.
- (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
- (3) P. Ravindra Vs. Union Territory of Pondichery 1997(1) SSC 350.
- (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down by any recruitment rules. In the present case, the appointments of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only

on account of the closure of the screening of films in the auditorium. No doubt, WW1 has stated that after the termination of his service some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basis.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with Sec. 25F of the I.D. Act. Thus, in any view of the matter, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001

K. VEERAPU NAIDU, Presiding Officer

Appendix of Evidence

Witnesses Examined for

Workman :	Management :
WW1 G. Esver Rao	MW 1 S.P. Mallick
WW2 S. Srinivasa Rao	

Documents marked for workman :

Ex. W1	30-4-1999 Telegram addressed to Management by Sri S. Gangadhara Reddy, Advocate on behalf of the Union.
Ex. W2	05-1999 Letter addressed to Assistant Commissioner of Labour, Visakhapatnam by the Union.
Ex. W3	22-6-1999 Letter addressed to the Union by the ACL.
Ex. W4	20-4-1997 Order in MW Case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act 1948 Visakhapatnam.
Ex. W5	Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

Ex. M1	28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2).
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Ex. M2	3-12-1992 : Visakha General Order No. 33/92 Command Lecture-cum- Assembly Hall Samudrika.
Ex. M3	Balance Sheet and audit report for the quarter ending 31st July, 1998.
Ex. M4	Balance Sheet and audit certificate for quarter ending 31st January, 2000.
Ex. M5	5-5-1997 : Balance Sheet and audit report for the quarter ending 30th April, 1997.
Ex. M6	10-3-1999 : Memorandum of agreement for security cover.
Ex. M7	30-4-1999 : Termination Order.
Ex. M8	29-4-1999 : Letter addressed to R2 by R1.
Ex. M9	30-4-1999 : Termination order of the petitioner.
Ex. M10	17-5-1999 : Letter addressed to Assistant Commissioner of Labour by the Management.

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1859.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रक्षा मंत्रालय के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-14025/15/2001-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1859. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/o Defence and their workman, which was received by the Central Government on 2-7-2001

[No. L-14025/15/2001-JR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT: VISAKHAPATNAM.

PRESENT:

Shri K. Vcerepu Naidu, B.Sc., B.L.,
Chairman & Presiding Officer.

Dated : 1st day of June, 2001

I.T.I.D. (C) 63/99

BETWEEN

Tekkam Raju S/o Atcha Rao
C/o S. Gangadhara Reddy, Advocate,
D.No. 9-1-75/1, New Resapuveniapalem,
Visakhapatnam-13 ...Workman.

AND

- (1) The Flag Officer,
Commanding in chief for CSOC (P&A)
Headquarters,
Eastern Naval Command,
Naval Base Port, Visakhapatnam
- (2) The Captain
INS Virabahu, Samudrika,
Naval Auditorium Naval Base,
Visakhapatnam. ...Management.

This dispute coming on for final hearing before me in the presence of Sri S. G.Reddy, advocate for workman and the Government Pleader for Management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following:

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Safaiwala in the Samudrika Naval Auditorium, Naval Base, Visakhapatnam on 1-10-91 and he worked as such till 30-4-99 and he was paid Rs. 683/- per month. He was working for 8 hrs for a day for 26 days in a month. He was not paid minimum wages and hence workers union filed M.W. 104/95 before the Authority i.e., Asst. Commissioner of Labour Circle-II, Visakhapatnam and it was allowed. The respondents filed a writ petition No. 15863/97 questioning the said order and it is pending before the Hon'ble High Court. While so, they made an attempt to terminate the services of Union General Secretary by name Sri S. Srinivasa Rao and he approached the Hon'ble High Court and filed a writ and obtained interim orders not to terminate his services. So he is continuing in service whereas the petitioner's services were terminated w.e.f. 30-4-99 without assigning any reasons on the ground that the respondents have stopped screening of Movies in the Samudrika Naval Auditorium and also the Non-Public Fund.

(3) It is the further case of the workman the Semudrika Auditorium is not closed and that the management is vindictive because the union filed a case

under Minimum Wages Act. Hence the workman is entitled for reinstatement with back wages and continuity of service.

(4) The respondents 1 and 2 opposed this application on the ground that Samudrika Naval Auditorium is a lecture cum assembly hall placed under the Administration of the second respondent and it is used for the purpose of screening of training films for the officers and the sailors, giving lectures by senior defence officer, dignitaries, VIP's for conducting symposiums and cultural programmes by Naval personnel etc. and the hall was also used for screening of movies once in a while, for entertainment of officers, sailors and their families who are working in a very stress atmosphere. To meet certain urgent requirements, casual workers like the petitioners and some others were engaged locally and they were paid honorarium as approved by the authorities of the second respondent organisation. The wages to casual labourers were made from the Non Public Fund of the second respondent unit but not from the Government fund. The services of these casual workers are only on need basis and it will not come under the purview of Minimum Wages Act. It is true that the union filed M.W. 104/95 and it was allowed in favour of the workmen and against which the respondent have filed W.P.No. 15863/97 in the Hon'ble High Court of A.P., Hyderabad and the Honourable court has granted stay orders against the order of the Labour Commissioner and directed to deposit Rs. 36,129/- and the main writ is pending. As per the directions of the High Court, the respondent have to deposit an amount of Rs. 36,129/- on 18-5-99.

(5) It is further submitted that Naval Auditorium is exclusively meant for officers and sailors for lecture cum assembly demonstration by senior defence officers, seminars, presentations and cultural programme by Naval Personnel etc. Due to the advent of Cable TV the Samudrika Naval Auditorium has been incurring losses due to recurring of losses and the unavailability of the Samudrika Non-Public Fund, the screening of movies for the entertainment of troops has been stopped and the non-public fund is closed. Hence the petitioner's services were stopped by giving one month's notice and one month's honorarium in lieu of the notice. The termination or disagreement of the casual employees was only due to unavailability of the work. Therefore, the provisions of I.D. Act has no application. The screening of the movies in Samudrika has been completely stopped and there is no intention of restarting the screening of movies in the auditorium. The workman was engaged on casual basis for a specific purpose and on completion of job, his services are to be discontinued and there was no need for his services. Hence the petition is liable to be dismissed.

(6) The workman is examined as WW1 and the General Secretary of the union is examined as WW2 and

got marked Exs. W1 to W5. On behalf of the management, the legal officer for commanding officer, Naval Command, who was maintaining the auditorium from March, 1999 is examined as MW1 and through him Exs. M1 to M10 are marked.

(7) Heard both sides.

(8) The point that arises for consideration in this application is whether the petitioner is entitled for reinstatement with back wages?

(9) The counsel appearing for the workman contends that the petitioner was appointed as Safaiwala on 1-10-91 and he was paid Rs. 683/- per month and that he worked continuously till his services are terminated w.e.f. 30th April, 1999. He was serving as Safaiwala in the Samudrika Auditorium mentioned by respondents 1 and 2 and his services were terminated because the workers union filed a case against the respondent under the Minimum Wages Act and hence the management vindictively terminated the service of the petitioner. These facts are stated by both the workmen as well as the General Secretary of the workers Union as WW1 and 2. It is also contended by the workman that the workers have raised a dispute before the Asst. Commissioner of Labour (Central) whose efforts were failed and he advised the union to approach this Tribunal. It is also the admitted case of the workman that there is no appointment order in writing, the general secretary Srinivasa Rao has got an appointment order which is also marked as Ex.M1. However, the petitioner was served with a termination order which is also marked as Ex. M9 and the termination notice is marked as Ex. M7.

(10) The counsel appearing for the management contends that Samudrika Auditorium is mainly present for the lectures, seminars, meeting to be organised by the defence personnel screening of films for the entertainment of the officers, sailors and children and their family members and the service of the petitioner was engaged only for the screening of the films on honorarium basis by paying some honorarium to the workers from the non-public funds. Exs. M3 to M5 are the balance sheets and the audit reports for the years ending 31st July, 1998, 31st June, 2000 and 30th April, 1997. The wages are being paid to the petitioner from the non-public fund and it has no connection with the Navy nor with the Government and the auditorium screening is now given to Sai Agencies on contract basis from 1st October, 1997 as per Ex. M6. The services of the workman are terminated on the basis of the letter received from the Flag Officer Commanding in Chief which is marked as Ex. M8 under which it is requested that all the employees working on the honorarium basis except WW2 are to be terminated. As per that letter, the administrative officer of the Auditorium incharge terminated the services of the petitioner by issuing the termination order to the petitioner. The counsel appearing for the management also admitted about the filing of the case under Minimum Wages Act by

the workers union and their success and against which, the management filed a writ petition No. 15863/97 wherein a interim direction was given to deposit Rs. 34,729/- and the same was deposited by the bank draft and Ex. M10 is the letter stating the said fact. So far as the dispute under Minimum wages act is admitted by both the parties. Now the court question for the determination is as to whether the petitioners services are taken on casual basis and if so whether the termination of the petitioner's services is legal?

(11) The evidence adduced by both the parties disclosed that the wages are being paid to the workmen from non public fund which is being raised by the members of the Naval Officers, Sailors etc. and the services of the petitioner was taken only in the Auditorium for screening of the films on honorarium basis. No doubt, the petitioner has put in a continuous service of about 8 years and the termination of his services resulted due to the closure of the Auditorium for the purpose of screening of the movies. The main object of the Auditorium is to have the lectures and training programmes, seminars etc. by the defence personnel and the screening of films is a part of activity in the auditorium for the entertainment of the commanding officers, sailors and their families, because of the incurring of losses in the non public fund and the advent of cable T.Vs the management was constrained to close the screening of the films in the auditorium. However, the workman complained that it is a vindictive attitude of the management because they approached the authorities under the Minimum Wages Act. The case of the management is that paucity of funds from the non public fund for the maintenance of the auditorium and secondly due to the advent of the cable TV, the screening of films in the Samudrika Auditorium is discontinued. Therefore, the services of the petitioner is no longer required. Thus, under the circumstances, the claim of the petitioner that he shall be continued in the same post in which he was employed is to be considered.

(12) Under the circumstances, stated above, I am inclined to take the aid of the decision rendered by his Lordship in G. Sudhakar and 98 others Vs. LIC of India reported in 1998(6) ALT 147-1998(6) ALD 527 wherein his Lordship was pleased to hold that two conditions are so existent to grant the relief of regularisation or continuation of services (1) Entry of an employee on temporary or adhoc basis should be against in existing vaceancy, (2) The appointment was made after going through the selection procedure laid down by the relevant recruitment rules. The above said decision was rendered by his Lordship by placing reliance on 4 Supreme Court decisions which are as follows :

- (1) 1996 (II) SCC 341 between Union of India Vs. Singabar Dutt.

- (2) Ashwani Kumar Vs. State of Bihar 1997(2) SCC 1.
 (3) P. Ravindra Vs. Union Territory of Pondicherry 1997(1) SCC. 350.
 (4) P. Ramakrishna Vs. State of Kerala 1996(II) SCC. 565.

(13) Here in this case the appointment of the petitioner is not in any existing vacancy nor his appointment is after going through the selection procedure laid down any recruitment rules. In the present case, the appointments of the petitioner was only on adhoc basis, temporarily without following any statutory recruitment rules. On that ground itself the petitioner is not entitled to get any relief.

(14) Thus, here this is a case, where the termination of the services or disengagement of the petitioner is only on account of the closure of the proceeding of films in the auditorium. No doubt, WW1 has stated that after the termination of his service some are employed. But this fact was not pleaded and even otherwise there is no material on record to establish the said fact. Therefore, the evidence spoken to by him without any pleading has no basic.

(15) That apart, the management issued one month's notice and also paid one month's honorarium in lieu of notice, to the workman. Therefore, the termination or disengagement of the services of the petitioner is in accordance with sec. 25F of the I.D. Act. Thus, in any view of the master, I see no merits in this application.

(16) In the result, the petition is dismissed and Nil Award is passed. However, each party is directed to bear its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 1st day of June, 2001.

K. VFERAPU NAIDU

Presiding Officer

Appendix of Evidence

Witnesses Examined for

Workman :	Management :
WW. 1 T. Raju	
WW. 2 S. Srinivasa Rao	MW1 S. P. Mallick

Documents Marked for Workman :

Ex. W1	30-4-1999 Telegram addressed to Management by Sri S. Gangadhra Reddy, Advocate on behalf of the Union.
Ex. W2	05-1999 Letter addressed to Assistant Commissioner of Labour, Visakhapatnam by the Union.
Ex. W3	22-6-99 Letter addressed to the Union by the ACL.

- Ex. W4 20-4-1997 Order in MW case No. 104/95 before the authority U/Sec. 20 of Minimum Wages Act 1948, Visakhapatnam.
- Ex. W5 Telegram addressed to management by the High Court in WPMP No. 158/98 in WP No. 140/98.

Documents marked for Management :

- Ex. M1 28-6-1986 Letter of appointment of Sri S. Srinivasa Rao (WW2)
- Ex. M2 3-12-1992 Visakhe General Order No. 33/92 Command Lecture cum Assembly Hall-Samudrike.
- Ex. M3 Balance Sheet and audit report for the quarter ending 31st July, 1998.
- Ex. M4 Balance Sheet and audit certificate for quarter ending 31st January, 2000.
- Ex. M5 5-5-1997 Balance Sheet and audit report for the quarter ending 30th April, 1997.
- Ex. M6 10-3-99 Memorandum of agreement for security cover.
- Ex. M7 30-4-99 Termination Order.
- Ex. M8 29-4-1999 Letter addressed to R2 by S1.
- Ex. M9 30-4-99 Termination Order of the petitioner.
- Ex. M10 17-5-99 Letter addressd to Assistant Commissioner of Labour by the Management.

नई दिल्ली, 2 जुलाई, 2001

का.आ. 1860.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगभद्रा बोर्ड, टी. बी. डैम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2001 को प्राप्त हुआ था।

[सं. एल-42011/55/88-डी-II (बी)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 2nd July, 2001

S.O. 1860.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tungabhadra Board, T. B. Dam and their workman, which was received by the Central Government on 2-7-2001.

[No. L-42011/55/88-D. II (B)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 'SHRAM SADAN',
III MAIN, III CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE

Dated : 14th June, 2001

PRESENT

HON'BLE SHRI V. N. KULKARNI, B. Com, LLB
PRESIDING OFFICER
CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. No. 51/89

IPARTY**IIPARTY**

The President,
Tungabhadra Board Factory
Workers and Civil Employees

The Secretary,
Tungabhadra Board,
T.B. Dam, Hospet
Taluk,

Union, T.B. Dam,
Hospet Taluk,

Bellary District-583 101
(Advocate Shri A.K.
Bhat)

Bellary Dist.-583 101
(Advocate- Shri A.S.
Malebennur)

AWARD

1. The Central Government by exercising the powers conferred by clause(d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42011/55/88-D. II(B) dated 1-8-1999 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Tungabhadra Board, T.B. Dam, Hospet Taluk, Bellary District in not allowing S/Shri K.P. Periyappa, H.G. Gundachar, B.M. Mahanthaiaha, R. Aligiri, H.M. Gangadhar and A. Govindarajulu, to continue in service upto 60 years of age, is justified? If not, to what relief the workman concerned are entitled to?"

2. The first party Union Workmen were working with the Second party and action of the management in not allowing S/Shri K.P. Periyappa, H.G. Gundachar, B.M. Mahanthaiaha, R. Aligiri, H.M. Gangadhar and A. Govindarajulu, to continue in service upto 60 years of age is not justified so industrial dispute is raised.

3. The first party filed Claim Statement and has said that these workmen were appointed on workcharged establishment under paragraph 69 of the Madras Public Works Departmental Code which empowers the Executive Engineers, PWD to make such temporary appointment

upto a monthly pay of Rs. 100 per month. The management took a hostile and unreasonable attitude.

4. The Second party issued orders to K.P. Periyappa and Mahanthaiah retiring them on 1-7-89 reckoning the age of superannuation at 56 years before the conciliation Officer. The action of the management is wrong. The six workmen were appointed as workcharged establishment prior to 1-11-56 when the T.B. Project was under the control of the State of Madras. This first party union has further stated that the action of the management in not continuing in service upto 60 years is not correct.

5. The Second party filed objection Statement. The case of the second party is that the dispute raised by the workmen under the Industrial Dispute Act is not valid as the Industrial Dispute Act is not applicable to T.B. Board. The Second party has prayed to reject the reference.

6. First party remained absent. I have heard the learned counsel for the second party. I have perused all the relevant documents. It was argued by the learned counsel for the second party that the workmen were in Mysore State and the retirement age is 58 for the state of Mysore and Karnataka and therefore the action of the management in not continuing these workman upto 60 years is valid and there is no merit in the contention of the first party. The first party has not proved as to how they are entitled to continue work in the state of Mysore and Karnataka upto the age of 60 years. There is no evidence on behalf of the first party. There is no merit in this reference because nothing is proved by the first party.

7. Accordingly I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 14th June 2001)

SHRI V.N. KULKARNI, Presiding Officer.

नई दिल्ली, 3 जुलाई, 2001

का.आ. 1861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-40012/66/98-आई आर (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1861.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 3-7-2001.

[No. L-40012/66/98-IR (DU)]

KULDIP RAI VERMA, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर

आदेश संख्या : एल 40012/66/98/आई.आर.(डीयू.)
दिनांक 4-2-99

प्रकरण संख्या : सी.जी.आई.टी./जे-6/99

(1) श्रीमती मिथलेश पत्नी स्वर्गीय रमेशचंद जाति हरिजन निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान घोषित कायम मुकाम श्रमिक स्वर्गीय श्री रमेशचंद पुत्र श्री प्रभातिराम जाति हरिजन निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान।

(2) सागर पुत्र स्वर्गीय श्री रमेशचंद जाति हरिजन निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान उम्र लगभग 11 वर्ष।

(3) सुश्री ज्योति पुत्री श्री रमेशचंद उम्र 8 वर्ष जाति हरिजन निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान।

(4) मा. अशिश पुत्र स्वर्गीय श्री रमेशचंद जाति हरिजन उम्र करीब 7 वर्ष निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान नाबालिग एवं घोषित कायम मुकाम श्रमिक स्वर्गीय श्री रमेशचंद पुत्र प्रभातिराम जरिये प्राकृतिक संरक्षिका माता श्रीमती मिथलेश पत्नी स्वर्गीय श्री रमेशचंद पुत्र प्रभातिराम जाति हरिजन निवासी प्लॉट नम्बर 78-ए, बैंक कॉलोनी, अलवर, राजस्थान।

—प्रार्थीगण

बनाम

(1) मण्डल अभियन्ता प्रशासन कार्यालय दूरसंचार जिला प्रबन्धक, अलवर, राजस्थान।

—अप्रार्थी

उपस्थित :

प्रार्थीगण की ओर से

श्री सुरेश कश्यप, अधिवक्ता

अप्रार्थी की ओर से

श्री तेजप्रकाश शर्मा, अधिवक्ता

पंचाट दिनांक : 6-6-2001

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम, 1947 कहा गया है।) की धारा-10 की उपधारा (1) के खण्ड-घ के प्रावधानों के अन्तर्गत उक्त आदेश के जरिए न्याय निर्णयन हेतु निर्देशित किया गया :—

“Whether the action of the Divisional Engineer, Telecom Department, Alwar is legal & justified in terminating the services of the workman Sri Ramesh Chand, Sweeper. If not, to what relief the workman is entitled?”

संबंधित कर्मकार रमेशचंद (जिसे बाद में कर्मकार कहा गया है।) की दिनांक 8-7-98 को मृत्यु होने के कारण उसके उत्तराधिकारियों के द्वारा यह उल्लेख करते हुए स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया कि कर्मकार ने अप्रार्थी के अधीन निरन्तर स्वीपर के पद पर दिनांक 10-11-1986 से दिनांक 16-12-96 तक कार्य किया। कर्मकार के पद के कार्य की प्रकृति स्थाई थी। दिनांक 28-8-89 को अप्रार्थी द्वारा कर्मकार की छंटनी कर दी गई जिसकी चुनौती कर्मकार ने अपर मुंसिफ एवं न्यायिक मजिस्ट्रेट संख्या-1, अलवर के न्यायालय में दोबानी वाद प्रस्तुत कर दी, साथ में स्थगन प्रार्थना-पत्र प्रस्तुत किया था, जिस पर विविध प्रकरण संख्या 157/89 दर्ज हुआ। जिसमें अप्रार्थी को पाबन्द किया गया कि कर्मकार को दिनांक 28-8-89 के आदेश के आधार पर सेवामुक्त नहीं किया जाए व बिना विधिक प्रक्रिया अपनाए उसे न हटाया जाए। कर्मकार ने स्थगन आदेश प्राप्त करने के पश्चात् अप्रार्थी के यहां कार्य करना प्रारम्भ किया, परन्तु नाराज होकर कर्मकार को प्रताड़ित किया जाने लगा व उसकी मजदूरी में जान-बूझकर व्यवधान किया गया। कर्मकार फरवरी, 1994 से गम्भीर रूप से बीमार पड़ गया व उसने अपनी चिकित्सा कराई व फरवरी, 1994 से दिनांक 29-7-96 तक बिना वेतन के मेडिकल अवकाश पर रहा व स्वस्थ होने पर दिनांक 30-7-96 को उसने कार्य ग्रहण करने की रिपोर्ट दी व प्रमाण-पत्र की मूल प्रति प्रस्तुत की, परन्तु उसे कार्य पर नहीं लिया गया व दिनांक 16-12-96 को कर्मकार को कहा गया कि उसे ड्यूटी पर नहीं लिया जाएगा व वह अपने आप को सेवामुक्त समझे। कर्मकार की छंटनी करते समय कोई वरिष्ठता सूची प्रकाशित नहीं की गई। “लास्ट कम फर्स्ट गो” सिद्धान्त का उल्लंघन किया गया व कर्मकार के स्थान पर एक नए श्रमिक रमेशचंद को भर्ती कर लिया गया। कर्मकार की सेवामुक्त करने से पूर्व कोई घरेलू जांच भी नहीं की गई। कर्मकार सेवामुक्त से मृत्यु की तारीख तक किसी भी लाभ के पद पर नहीं रहा। प्रार्थना की गई कि कर्मकार की सेवामुक्ति को अवैध व अनुचित घोषित किया जाए। दिनांक 8-7-98 तक पिछला पूरा वेतन एवं लाभ परिलाभ सेवा की निरन्तरता मानते हुए दिलाए जावें।

विपक्षी की ओर से जवाब प्रस्तुत किया गया, जिसमें उल्लेख किया गया कि कर्मकार के उत्तराधिकारी होने के बारे में कोई प्रमाण प्रस्तुत नहीं किया गया। कर्मकार को दैनिक वेतन भोगी कर्मचारी के रूप में कार्य पर लगाया गया था। उसकी नियुक्ति किसी स्थाई अथवा स्वीकृत पद पर निर्धारित प्रक्रिया के तहत नहीं की गई व न उसने

निरन्तर कार्य किया। कर्मकार के कार्य की प्रकृति भी स्थाई नहीं थी। प्रार्थी के द्वारा अपर मुंसिफ न्यायालय में दोबानी वाद व स्थगन प्रार्थना-पत्र प्रस्तुत किए जाने को स्वीकार किया गया। कर्मकार के द्वारा एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य करने के कथन को अस्वीकार किया गया। प्रार्थी के द्वारा कार्य ग्रहण करने आने के कथन को भी अस्वीकार किया गया। कर्मकार के स्थान पर किसी अन्य व्यक्ति को नियुक्ति प्रदान करने के कथन को भी अस्वीकार किया गया। यह भी उल्लेख किया गया कि कर्मकार के मामले में धारा 25-एफ के प्रावधान लागू नहीं होते। अस्थायी कर्मचारी अवकाश अथवा मेडिकल सुविधा प्राप्त करने का अधिकारी नहीं है।

प्रार्थीगण की ओर से मृतक की पत्नी श्रीमती मिथलेश का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रतिपरीक्षा करने का अवसर विपक्षी के अधिवक्ता को दिया गया। प्रलेखीय साक्ष्य में प्रतिलिपि आदेश प्रदर्श डब्ल्यू-1, व्यक्तिगत कार्ड प्रदर्श डब्ल्यू-2, जवाब प्रार्थना-पत्र प्रदर्श डब्ल्यू-3, प्रतिलिपि पत्र प्रदर्श डब्ल्यू-4, प्रतिलिपि रोग प्रमाण-पत्र प्रदर्श डब्ल्यू-5, प्रतिलिपि कार्ड प्रदर्श, डब्ल्यू-6 (अ), प्रतिलिपि रोग प्रमाण-पत्र प्रदर्श डब्ल्यू-7 से 28, प्रतिलिपि मृत्यु प्रमाण-पत्र प्रदर्श डब्ल्यू-7(अ) प्रस्तुत किए गए। विपक्षी की ओर से जी.पी. मीणा का शपथ-पत्र प्रस्तुत किया गया, जिस पर प्रतिपरीक्षा करने का अवसर प्रार्थीगण के अधिवक्ता को दिया गया। इसके अतिरिक्त प्रलेखीय साक्ष्य में प्रलेख एम-1 से एम-20 प्रस्तुत किए गए, जिनका उल्लेख यथा स्थान किया जाएगा।

बहस सुनी गई एवं पत्रावली का अवलोकन किया गया।

पक्षकारों के द्वारा प्रस्तुत किए गए साक्ष्य के आधार पर निम्नांकित बिन्दुओं पर विचार करना है :—

- (1) क्या कर्मकार ने विपक्षी संस्थान में दिनांक 10-11-86 से निरन्तर 16-12-96 तक कार्य किया?
- (2) क्या अप्रार्थी के द्वारा दिनांक 16-12-96 को कर्मकार की सेवा समाप्त की गई?
- (3) क्या अप्रार्थी के द्वारा अधिनियम, 1947 की धारा 25-एफ, जी एवं औद्योगिक विवाद (केन्द्रीय) नियम, 1957 के नियम 77 का उल्लंघन कर कर्मकार की सेवा समाप्त की गई?
- (4) प्रार्थीगण किस सहायता को प्राप्त करने के अधिकारी हैं?

बिन्दु संख्या 1 :—कर्मकार की पत्नी श्रीमती मिथलेश का कथन है कि उसके पति रमेश चंद की नियुक्ति दिनांक 10-11-86 को स्वीपर के पद पर हुई थी व उसे दिनांक 16-12-96 को सेवा से हटा दिया। उसके पति ने 240 दिन से अधिक कार्य किया। उसका यह भी कथन है कि फरवरी, 94 के पूर्व से दिनांक 29-7-96 तक उसके पति ने राजकीय चिकित्सालय में रहकर

चिकित्सा कराई व बिना वेतन के मेडिकल अवकाश पर रहा। प्रतिपरीक्षा में उसका कथन है कि उसके पति ने चार वर्ष तक कार्य किया। उसके बाद उसका पति बीमार हो गया। उसका यह भी कथन है कि 1996 के बाद उसका पति काम नहीं करता था, बीमार हो गया। उसके व्यक्तिगत कार्ड प्रदर्श डब्ल्यू-2 के अनुसार उसने सन् 1986 में 27 दिन, 1987 में 290 दिन, सन् 1988 में 341 दिन, सन् 1989 में 130 दिन कार्य किया व कार्य विवरण प्रदर्श एम-20 के अनुसार उसने वर्ष 1990 में सितम्बर, अक्टूबर, नवम्बर, दिसम्बर माह में क्रमशः 19, 13, 21 व 1 दिन कुल 54 दिन कार्य किया। प्रतिलिपि जवाब में अप्रार्थी की ओर से स्वीकार किया गया है कि प्रार्थी ने 240 दिन से अधिक कार्य किया। जी.पी. मीणा, उप मण्डल अभियन्ता ने कर्मकार का व्यक्तिगत कार्ड प्रदर्श डब्ल्यू-2 सही होना कहा है परन्तु कहा है कि वह प्रमाणित नहीं है, फोटोस्टेट है। अप्रार्थी की ओर से प्रार्थी के द्वारा सन् 1986 से 1989 के बीच कार्य दिवसों का कोई विवरण प्रस्तुत नहीं किया गया है। ऐसी परिस्थिति में प्रार्थी के व्यक्तिगत कार्ड पर अविश्वास करने का कोई कारण प्रतीत नहीं होता व कर्मकार के द्वारा उसके व्यक्तिगत कार्ड के आधार पर उक्त अवधि में सन् 1986 से मई, 91 के बीच व सन् 1990 में कार्य विवरण प्रदर्श एम-20 के अनुसार कार्य किया जाना प्रमाणित होता है।

यह विवादित नहीं है कि दिनांक 28-8-89 को एक माह का नोटिस कर्मकार की सेवा समाप्त करने के बारे में दिया गया था, जिस पर अपर मुंसिफ न्यायालय ने विविध व्यवहार प्रकरण संख्या 157/89 में दिनांक 28-1-93 को आदेश प्रदर्श डब्ल्यू-1 दिया, जिसके अनुसार अप्रार्थी को पाबन्द किया गया कि प्रार्थी को उक्त नोटिस के आधार पर सेवामुक्त नहीं करे व कार्य करने में कोई रुकावट पैदा न करें। आदेश दिनांक 28-1-93 के पश्चात् कर्मकार का विपक्षी के अधीन कार्य करना प्रमाणित नहीं होता। दिनांक 2-2-93 को विपक्षी के द्वारा पत्र प्रदर्श एम-3 रजिस्टर्ड डाक से भेजा गया, जो कर्मकार को प्राप्त हो गया। उक्त पत्र दिनांक 2-2-93 में उल्लेख किया गया था कि वह अपने कार्य पर नहीं आ रहा है। इससे पूर्व भी अप्रैल, 1991 से जुलाई, 91 तक कर्मकार के अनुपस्थित होने के बारे में पत्र प्रदर्श एम-18 रजिस्ट्री के द्वारा उसे भेजा गया। अगस्त, 1991 से नवम्बर, 91 के बीच अनुपस्थित रहने के बारे में पत्र एम-16 जरिए रजिस्ट्री प्रेषित किया गया, जो कर्मकार को प्राप्ति रसीद प्रदर्श एम-14 के अनुसार प्राप्त हो गया। जनवरी, 1991 से जनवरी, 92 तक उसके अनुपस्थित रहने के बारे में पत्र प्रदर्श एम-13 रजिस्ट्री से भेजा गया है, जो कर्मकार को ए.डी. प्रदर्श एम-11 के अनुसार प्राप्त हो गया। पत्र प्रदर्श एम-10 कर्मकार को फरवरी, 1992 से अनुपस्थित रहने के बारे में भेजा गया है, जो ए.डी. प्रदर्श एम-8 के अनुसार उसे प्राप्त हो गया। दिनांक 30-10-92 से उसके कार्य पर अनुपस्थित रहने के बारे में पत्र प्रदर्श एम-6 प्रेषित किया गया है जिसकी सूचना ए.डी. प्रदर्श एम-4 के अनुसार उसे प्राप्त हो गई। उक्त पत्रों को जी.पी. मीणा एम-डब्ल्यू-1 ने प्रमाणित किया है। इस प्रकार स्थगन आदेश दिनांक 28-1-93 से पूर्व से ही कर्मकार विपक्षी संस्थान में कार्य हेतु उपस्थित नहीं आ रहा था। जी.पी. मीणा एम-डब्ल्यू-1 का कथन है कि कर्मकार

अप्रार्थी संस्थान में कार्यग्रहण करने नहीं आया। उसने इस सुझाव को गलत बताया है कि कर्मकार दिनांक 30-7-96 को कार्य ग्रहण करने बीमारी का प्रमाण-पत्र लेकर आया हो। एम-डब्ल्यू-2 जे.एस. बंसल, उप मण्डल अभियन्ता का कथन है कि सन् 1990 के बाद कर्मकार कभी कार्य हेतु उपस्थित नहीं हुआ। आर. एस. हाड़ा-एम डब्ल्यू-3 का कथन है कि कर्मकार ने बीमारी के बावत् कोई प्रमाण-पत्र पेश नहीं किया। उसने स्पष्ट कहा है कि स्थगन आदेश के बाद तो कर्मकार कभी भी काम पर नहीं आया। श्रीमती मिथलेश ने स्वीकार किया है कि उसके पति ने 4 वर्ष कार्य किया। नोटिस दिनांक 28-8-89 की पालना में स्थगन आदेश से पूर्व भी प्रार्थी की सेवाएं समाप्त नहीं की गईं जैसाकि कर्मकार के कार्य विवरण प्रदर्श एम-2 से स्पष्ट है। स्थगन आदेश के पश्चात् कर्मकार के द्वारा सन् 1990 के पश्चात् सन् 1991, 92, 93 में कार्य किए जाने के बारे में कोई साक्ष्य प्रार्थी की ओर से प्रस्तुत नहीं की गई। यह तो प्रार्थीगण की ओर से स्वीकार किया गया है कि फरवरी, 1994 से 29-7-96 तक कर्मकार बीमार था। अतः उक्त अवधि में उसके कार्य न करने के बारे में कोई विवाद भी नहीं है। इस प्रकार सन् 1991 से 29-7-96 तक कर्मकार के द्वारा कार्य किया जाना प्रमाणित नहीं होता है। प्रार्थी की ओर से प्रतिलिपि प्रार्थना-पत्र दिनांक 30-7-96 प्रदर्श डब्ल्यू-4 प्रस्तुत की गई है व यह तर्क दिया गया है कि कर्मकार दिनांक 30-4-96 को कार्य हेतु उपस्थित हुआ था। कर्मकार की मृत्यु हो चुकी है। कार्य पर उपस्थित होने के बारे में वही कथन कर सकता था। उसकी पत्नी मिथलेश को इस बारे में व्यक्तिगत जानकारी होना नहीं कही जा सकती। जैसा कि उल्लेख किया जा चुका है जी. पी. मीणा का कथन है कि कर्मकार दिनांक 30-7-96 को कार्य ग्रहण करने उपस्थित नहीं हुआ था। जे.एस.एस. बंसल के द्वारा कर्मकार का 1990 के पश्चात् व आर.एस.हाड़ा के अनुसार स्थगन के पश्चात् कर्मकार का कभी कार्य पर उपस्थित न आना कहा है। उक्त साक्षियों को प्रदर्श डब्ल्यू-4 के बारे में कोई प्रश्न नहीं पूछे गए कि क्या वह पत्र विपक्षी को प्राप्त हुआ? जबकि आर.एस.हाड़ा का कथन है कि कर्मकार ने कोई बीमारी का प्रमाण-पत्र पेश नहीं किया। उक्त परिस्थितियों में यह नहीं कहा जा सकता कि कर्मकार दिनांक 30-7-96 को कार्य पर उपस्थित हुआ। यह उल्लेख करना उचित होगा कि यदि उसे दिनांक 30-7-96 को कार्य पर उपस्थित होने से इंकार कर दिया था तो दिनांक 16-12-96 तक क्यों इंतजार करता रहा? अतः यह प्रमाणित नहीं होता कि कर्मकार ने सन् 1990 के पश्चात् दिनांक 16-12-96 तक अप्रार्थी संस्थान में कार्य किया।

बिन्दु संख्या 2 :— प्रार्थी की ओर से दिनांक 16-12-96 को कर्मकार की सेवामुक्ति होना बताया गया है जबकि विपक्षी के द्वारा उसे कार्य पर लेने से इंकार कर दिया गया। प्रार्थी की ओर से ऐसा उल्लेख किया गया है कि उसे दिनांक 30-7-96 को कार्य पर नहीं लिया गया था। यदि तर्क के लिए मान भी लिया जाए कि उसे दिनांक 30-7-96 को कार्य पर नहीं लिया तो उसकी सेवा समाप्ति दिनांक 30-7-96 को मानी जाएगी न कि दिनांक 16-12-96 को जबकि विपक्षी के द्वारा कर्मकार की सेवा समाप्ति मौखिक रूप से किया जाना बताया जाता है। दिनांक 16-12-96 को कर्मकार कार्य पर उपस्थित

हुआ व मौखिक रूप से उसकी सेवा समाप्त की गई, इस बारे में कर्मकार ही बता सकता था। विपक्षी की ओर से ऐसी साक्ष्य प्रस्तुत की गई है कि कर्मकार तो सन् 1990 के पश्चात् कार्य पर उपस्थित ही नहीं हुआ। ऐसी दशा में यह कैसे कहा जा सकता है कि विपक्षी के द्वारा कर्मकार की सेवा दिनांक 16-12-96 को समाप्त की गई।

बिन्दु संख्या 3 :- प्राथी के विद्वान अधिवक्ता का तर्क है कि कर्मकार का सेवा समाप्ति के पूर्व के वर्षों में लगातार एक वर्ष कार्य करना प्रमाणित है। अतः कर्मकार की सेवा समाप्ति अधिनियम, 1947 की धारा 25-एफ की पालना किए बिना नहीं की जा सकती। उनका यह भी तर्क है कि कर्मकार की सेवा समाप्ति से पूर्व उसके अनुपस्थित रहने के बारे में न तो कोई आरोप-पत्र दिया गया व न कोई जांच की गई। ऐसी स्थिति में उसकी सेवा समाप्ति दोषपूर्ण है। उनका तर्क है कि विपक्षी संस्थान उद्योग की परिभाषा में आता है। उन्होंने अपने तर्क के समर्थन में रिट पिटीशन नम्बर 2904/1983 गौरी शंकर बनाम विश्वकर्मा लिमिटेड, एफ. जे.आर.(वोल्यूम-78) पृष्ठ 153 (एससी) आनन्द बिहारी व अन्य बनाम आर.एस.आर.टी.सी., 1997(9) सुप्रीम कोर्ट 469 जनरल मैनेजर टेलीकॉम बनाम एस. श्रीनिवासा राव व अन्य, 1976 (II) एल.एल.एन. पृष्ठ 5 (एससी) एस. बी. आई. बनाम सुंदरामनी, एफ.जे.आर. (वोल्यूम-55) पृष्ठ 210 (एससी) देहली क्लॉथ एण्ड जनरल मिल्स कम्पनी लिमिटेड बनाम शम्भूनाथ मुखर्जी व अन्य, एफ.जे.आर. (वोल्यूम-69) पृष्ठ 161 (पीएण्डएच) पंजाब स्टेट स्माल इण्डस्ट्रीज कार्पोरेशन लिमिटेड बनाम यूनिन टेरीटोरी ऑफ चण्डीगढ़, 1993 (II) एल. एल. एन. पृष्ठ 575 (एससी) डी.के. यादव बनाम जे.एम.ए. इण्डस्ट्रीज लिमिटेड, एफ.जे.आर. (वोल्यूम-68) पृष्ठ 248 उत्तम सिंह बनाम लेबर कोर्ट पटियाला, 1982 (I) एल.एल.एन. पृष्ठ 257 (एससी) राबर्ट डीसूजा बनाम एक्जीक्यूटिव इंजीनियर दक्षिणी रेलवे व अन्य को उद्धृत किया है।

रिट पिटीशन नम्बर 2904/83 में बम्बई उच्च न्यायालय के द्वारा यह अभিনিर्धारित किया गया है कि सेवा त्याग के मामले में नियोजक के द्वारा कर्मचारी की सेवा समाप्ति करने से पूर्व नोटिस देना व जांच किया जाना आवश्यक है। एफ.जे.आर. (वोल्यूम-78) पृष्ठ 153 पर प्रकाशित मामले में अधिनियम, 1947 की धारा 2(ओओ) (सी) का "इल हैल्थ" का क्या अर्थ है, के बारे में बताया गया है। 1997 (9) सुप्रीम कोर्ट पृष्ठ 469 के मामले में टेलीकॉम दूरसंचार विभाग का उद्योग होता अभিনিर्धारित किया है। 1976(II) एल.एल.एन. पृष्ठ-5 के मामले में उच्चतम न्यायालय ने यह अभিনিर्धारित किया है कि सेवा समाप्ति नियोजक के द्वारा सक्रिय कदम उठाने से अथवा नियुक्ति अवधि समाप्त होने पर अधिनियम, 1947 की धारा 2(ओओ) के प्रयोजनार्थ होती है। एफ.जे.आर. (वोल्यूम-55) पृष्ठ 210 के मामले में कर्मचारी का रोलस से स्टेण्डिंग आर्डर के तहत नाम हटाया जाना छंटनी के तहत आता है। एफ.जे.आर. (वोल्यूम-69) पृष्ठ 161 पर प्रकाशित मामले में कर्मचारी को अनुपस्थिति के आधार पर बिना जांच किए सेवामुक्त किया गया था जबकि अनुपस्थिति का आचरण दुराचरण के तहत स्टेण्डिंग आर्डर के तहत आता था, सेवा समाप्ति अवैध पाई गई। 1993 II एल.एल.एन. पृष्ठ

575 (एससी) के मामले में भी ऐसा ही अभিনিर्धारित किया गया। एफ.जे.आर. (वोल्यूम-68) पृष्ठ 248, 1982 (I) एल.एल.एन. पृष्ठ 257 के मामले में यह अभিনিर्धारित किया गया कि यदि कर्मचारी ने एक वर्ष या उससे अधिक निरन्तर सेवा पूरी कर ली है तो यदि उसकी सेवा किसी कारण से समाप्त की जाए तो वह छंटनी के अपवाद के तहत नहीं आती है। अधिनियम, 1947 की धारा 2 (ओओ) में छंटनी की परिभाषा निम्न प्रकार दी गई है:—

"2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health ;

धारा 2(ओओ) में खण्ड(बीबी) अधिनियम, 1984 के द्वारा जोड़ा गया है ! ऐसी साक्ष्य प्राथी की ओर से प्रस्तुत की गई कि प्राथी फरवरी, 94 के पूर्व से दिनांक 30-7-96 तक बीमार रहा। फरवरी, 94 के कितने पूर्व से कर्मकार बीमार था ऐसा नहीं बताया जाता। यह प्रमाणित नहीं हुआ है कि सन् 1990 से तथाकथित सेवा समाप्ति दिनांक 16-12-96 तक कर्मकार कार्यरत रहा। सन् 1994 से 1996 तक कर्मकार के बीमार रहने के कारण उसकी सेवा समाप्ति धारा 2(ओओ) के खण्ड-सी के तहत नहीं आने के बारे में प्राथी के विद्वान अधिवक्ता का कथन है कि ऐसा अप्रार्थी की ओर से जवाब में उल्लेख नहीं किया गया। अप्रार्थी की ओर से यह उल्लेख किया गया है कि अधिनियम, 1947 की धारा 25-एफ के प्रावधान आकृष्ट नहीं होते। ऐसी स्थिति में अप्रार्थी के विद्वान अधिवक्ता का तर्क है कि वे इस प्रकार की विधिक आपत्ति उठा सकते हैं। यह तो प्राथी की ओर से ही स्वीकार किया गया है कि प्राथी वर्ष 1994 से लेकर दिनांक 30-7-96 तक बीमार रहा। अतः मेरी राय में उसकी सेवा समाप्ति अधिनियम, 1947 की धारा 2(ओओ) के खण्ड-सी में छंटनी के अपवाद के तहत आएगी। प्राथी के द्वारा प्रस्तुत न्याय दृष्टान्त एफ.जे.आर. (वोल्यूम-58) पृष्ठ 153 न्याय दृष्टान्त में प्राथी को कोई सहायता नहीं मिलती। उक्त मामले में आर.एस.आर.टी.सी. के चालकों की दृष्टि कमजोर हो गई थी व इस कारण व चालक

कार्य हेतु अयोग्य हो गए थे। यह भी अभिनिर्धारित किया गया कि उनकी सेवा समाप्ति छंटनी के तहत नहीं आती व अधिनियम, 1947 की धारा 25-एफ के प्रावधान आकृष्ट नहीं होते। यह भी उल्लेख किया गया कि बस चालकों की दृष्टि कमजोर होने के कारण वे चालक के पद पर कार्य करने के अयोग्य हो गए थे इस कारण उनके लिए क्षतिपूर्ति दिलाए जाने की योजना माननीय उच्चतम न्यायालय के द्वारा तैयार की गई थी। प्रस्तुत मामला उक्त प्रकार का नहीं है। कर्मकार की सेवा समाप्ति स्टेण्डिंग आर्डर के तहत भी नहीं की गई। अतः प्रार्थी की ओर से प्रस्तुत किए गए न्याय दृष्टान्त जिनमें कि कर्मचारी की सेवा समाप्ति अनुपस्थिति के आधार पर स्टेण्डिंग आर्डर के तहत की गई थी, प्रस्तुत मामले में लागू नहीं होते। प्रस्तुत मामले में तो यह भी प्रमाणित नहीं है कि दिनांक 16-12-96 को कर्मकार की सेवा समाप्ति की गई। अहां कर्मचारी की सेवा समाप्ति नियोजक के किसी कृप्य के द्वारा नहीं की जाती हो, छंटनी के तहत नहीं आती। इस बारे में 1999(एल एण्ड एस) खोल्यूम-1 पृष्ठ 262 स्टेट ऑफ हरियाणा बनाम ओमप्रकाश का अवलोकन किया जा सकता है। 1976 II एल.एल.एन. पृष्ठ-5 का न्याय दृष्टान्त अधिनियम, 1947 की धारा 2(ओओ) में खण्ड-2(बीबी) के प्रावधान जोड़ने से पूर्व का है। जैसाकि उल्लेख किया जा चुका है यह प्रमाणित नहीं होता कि कर्मकार की सेवा समाप्ति दिनांक 16-12-96 को विपक्षी के द्वारा की गई थी। यदि तर्क के लिए मान भी लिया जाए कि उसकी सेवा समाप्ति दिनांक 16-12-96 को की गई थी तो भी उसकी सेवा समाप्ति अधिनियम, 1947 की धारा 2(ओओ) के खण्ड-सी, छंटनी के अपवाद के तहत आती है व इस कारण अधिनियम, 1947 की धारा 25-एफ, जी, व नियम, 1957 के नियम-77 के प्रावधान आकृष्ट नहीं होते। ऐसी भी कोई साक्ष्य प्रस्तुत नहीं की गई कि कर्मकार से किसी कनिष्ठ व्यक्ति को तथाकथित सेवा समाप्ति के पश्चात् विपक्षी के द्वारा नियोजन में रखा गया हो, अतः इस कारण भी अधिनियम, 1947 की धारा 25-जी के प्रावधान आकृष्ट नहीं होते।

बिन्दु संख्या :—4 उक्त बिन्दुओं के विनिश्चय के आधार पर कर्मकार रमेशचंद की सेवा समाप्ति अवैध एवं अनुचित होना प्रमाणित नहीं है व प्रार्थीगण कोई सहायता प्राप्त करने के अधिकारी नहीं हैं।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम, 1947 की धारा-17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

ह./- अपठनीय

पीठासीन अधिकारी

नई दिल्ली, 3 जुलाई, 2001

का०आ०.1862—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण वारांगल

के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-01 को प्राप्त हुआ था।

[सं. एल-40025/6/2001-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi the 3rd July, 2001

S.O. 1862—In pursuance of Section 17 of the Industrial Disput Act. 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Warangal as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 3-7-2001.

[No. L-40025/6/2001-IR(DU)]

KULDIPRAI VERMA, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT : AT WARANGAL.

PRESENT

Shri V. Appalanarasimham, B.Sc., B.L.
Judge

Thursday, the 6th day of January, 2000.

Industrial Dispute No. C 13 of 1998.

BETWEEN

S. Narsaiah S/o Venkataiah,
Ex-Casual Mazdoor,
C/o P. Surender Kumar,
Advocate.

Padmakshi Colony,
Manamkonda.

... Petitioner

And

The Telecom District Manager,
Telcom Department, Warangal.

... Respondent

This Industrial Dispute coming on before me for final hearing on 17-12-1999 upon perusing the petition, counter and all other documents on record and upon hearing the arguments of Sri P. Surender Kumar, advocate for the petitioner and Sri M. Sada Sivudu, A.C.P., for the respondent, the matter having been stood over for consideration till this day the court passed the following :—

AWARD

The petitioner filled this petition Under Section 2-A(2) of the I.D. Act to set aside the oral termination order dt. 7-11-1998 passed by the respondent and to direct the respondent to reinstate the petitioner as Casual Mazdoor with continuity of service and all benefits.

2. The brief averments in the petition filed by the petitioner are as follows :—

The petitioner was appointed as Casual Mazdoor in Telecom Department during 1986. He continuously worked as Casual Mazdoor without any break of service from 1986 to 7-11-1998. Suddenly the respondent terminated the services of the petitioner orally on 7-11-1998 without assigning any reasons. Petitioner completed 240 working days prior to his termination. The respondent has not followed the procedure under Section 25-F of I.D. Act and so, the termination is illegal. Juniors of the petitioner are retained and petitioner was terminated from service. Respondent has not followed the provisions of Section 25-G of I.D. Act. The petitioner is now aged 35 years and he cannot secure another job at this age. So, this petition if filed for reinstatement of the petitioner with all benefits by setting aside the termination order.

3. The brief averments in the counter filed by the respondent are as follows :—

The petitioner worked as Casual Mazdoor from 1-5-1995 and not from 1986. Petitioner was not terminated from service. As there is no necessity to engage Casual Mazdoor for want of any work, the services of the petitioner were kept out of duty, but he was not terminated. Petitioner never completed continuous service 240 days in any calendar year. As the Services of the petitioner are casual in nature, the provisions of Section 25-F of I.D. Act are not applicable, So also Section 25-G of I.D. Act is not applicable. The petition is liable to be dismissed.

4. The petitioner is examined as W.W.-1 and Exs. W-1 to W-4 are marked. Sub-Divisional Engineer is examined as M.W.-1 on behalf of the respondent.

5. Arguments of advocate for the petitioner and A. G.P., for the respondent are heard.

6. The point for consideration is whether termination of the petitioner orally on 7-11-1998 by the respondent is illegal and if so, to what relief the petitioner is entitled ?

7. **POINTS :—**The respondent admitted the fact that petitioner worked as Casual Mazdoor in Telecom Department from 1-5-1995 to September, 1998. M.W.-1 deposed in his evidence that petitioner stopped coming for duty from 1-11-1998 on the ground that his salary was not paid on 31-10-1998 for October, 1998. M.W.-1 clearly admitted in his evidence that petitioner worked for 240

days in a calendar year between 1-5-95 to 31-10-1998. W.W.-1 deposed in his evidence in support of the averments in the petition. The pay slips for the wages paid to the petitioner as Ex. W-2 and pay receipts under Ex. W-3 are admitted by M.W.-1 also. Ex. W-4 is the identity card of the petitioner issued by S.D.O.T., Warangal. Ex. W-1 is the attendance book for the attendance of the petitioner on different dates duly signed by the officer of the Telecom Department. Petitioner failed to place any satisfactory material to show that he worked from 1986 onwards. However it is clearly established that petitioner worked continuously from 1-5-1995 to 31-10-1998 by working 240 days in a calendar year prior to the termination on 7-11-1998. So respondent is bound to follow the procedure contemplated under Section 25-F of I.D. Act before terminating the services of the petitioner. Section 25-F of I.D. Act is mandatory. Respondent failed to follow the mandatory requirement under Section 25-F of I.D. Act. by giving one month notice or by paying wages for one month in lieu of notice. So, the termination is illegal. The respondent stated in counter that petitioner was kept out of the duty for lack of work. M.W.-1 deposed in his evidence that petitioner voluntarily stopped attending for duty from 1-11-1998 on the ground that his salary was not paid for October, 1998 on 31-10-1998. The respondent has taken inconsistent pleas and so the stand taken by the respondent is nothing but false. This court has no hesitation to hold that the respondent terminated the services of the petitioner illegally, even though he completed 240 days continuous service in a calendar year prior to the date of termination on 7-11-1998, and without following the mandatory requirement under Section 25-F of I.D. Act. Therefore, the termination order dt. 7-11-1998 against the petitioner passed by the respondent orally is liable to be set aside.

8. The petitioner is now aged 35 years. He cannot secure job at this age. He has to maintain himself and his dependents for a long period of more than 30 years. Simply because, there is no available post in Telecom Department, re-instatement of the petitioner shall not be refused in the given circumstances of the matter. It would be unreasonable to hold that petitioner is entitled only for one months wages and compensation under Section 25-F. G. of I.D. Act. It is a fit case to order for reinstatement of the petitioner as Casual Mazdoor and the respondent shall reinstate the petitioner as Casual Mazdoor, as the respondent illegally terminated the services of the petitioner without following the Mandatory procedure under provisions of I.D. Act. However this court is not inclined to give continuity of service or backwages, as the post held by the petitioner is only contingent in nature. Point is answered accordingly.

9. In the result, an award is passed by setting aside the termination of the petitioner oral orders dt. 7-11-1998 passed by the respondent and the respondent is directed to reinstate the petitioner in Telecom Department as Casual

Mazdoor as "FRESH RECRUIT". The petitioner is not entitled for continuity of service or backwages. This award shall come into force within 30 days or from the date of its publication, whichever is earlier by virtue of the powers conferred to this court under Section 17-A of I.D. Act.

Dictated to stenographer and transcribed by him, corrected and pronounced by me and given under my hand and seal of this court on this 6th day of January, 2000.

V. APPALANARASIMHAM, Judge

APPENDIX OF EVIDENCE:

WITNESSES EXAMINED:

FOR PETITIONER/WORKMAN:

FOR RESPONDENT/MANAGEMENT

W W.-I. S. Narsaiah.

M.W-I. C.S.R.K. Shastri

EXHIBITS MARKED:

FOR PETITIONER/WORKMAN:

L.N. W-1. dt. 1-9-95. Days Book of Sri S. Narasaiah showing the attendance and certified by the Department.

L.N. W-2. — Bunch of (10) pay slips.

L.N. W-3. — (15) Pay receipts of different months.

L.N. W-4 4-7-1997. Identity card issued to the petitioner by the Sub-Divisional Officer, Warangal.

FOR RESPONDENT/MANAGEMENT: -Nil-

Sd./- Illigible

नई दिल्ली, 3 जुलाई, 2001

का० आ०. 1863.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्दल मेशकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-14012/98/98-आई.आर.(डी.यू.)]

[सं. एल-14012/133/98-आई.आर.(डी.यू.)]

[सं. एल-14012/109/98-आई.आर.(डी.यू.)]

[सं. एल-14012/106/98-आई.आर.(डी.यू.)]

[सं. एल-14012/107/98-आई.आर.(डी.यू.)]

[सं. एल-14012/134/98-आई.आर.(डी.यू.)]

[सं. एल-14012/131/98-आई.आर.(डी.यू.)]

[सं. एल-14012/125/98-आई.आर.(डी.यू.)]

[सं. एल-14012/126/98-आई.आर.(डी.यू.)]

[सं. एल-14012/124/98-आई.आर.(डी.यू.)]

[सं. एल-14012/123/98-आई.आर.(डी.यू.)]

[सं. एल-14012/127/98-आई.आर.(डी.यू.)]

[सं. एल-14012/128/98-आई.आर.(डी.यू.)]

[सं. एल-14012/111/98-आई.आर.(डी.यू.)]

[सं. एल-14012/110/98-आई.आर.(डी.यू.)]

[सं. एल-14012/112/98-आई.आर.(डी.यू.)]

[सं. एल-14012/4/98-आई.आर.(डी.यू.)]

[सं. एल-14012/5/98-आई.आर.(डी.यू.)]

[सं. एल-14012/6/98-आई.आर.(डी.यू.)]

[सं. एल-14012/7/98-आई.आर.(डी.यू.)]

[सं. एल-14012/8/98-आई.आर.(डी.यू.)]

[सं. एल-14012/2/98-आई.आर.(डी.यू.)]

[सं. एल-14012/3/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-14012/98/98-IR(DU)]

[No. L-14012/133/98-IR(DU)]

[No. L-14012/109/98-IR(DU)]

[No. L-14012/106/98-IR(DU)]

[No. L-14012/107/98-IR(DU)]

[No. L-14012/134/98-IR(DU)]

[No. L-14012/131/98-IR(DU)]

[No. L-14012/125/98-IR(DU)]

[No. L-14012/126/98-IR(DU)]

[No. L-14012/124/98-IR(DU)]

[No. L-14012/123/98-IR(DU)]

[No. L-14012/127/98-IR(DU)]

[No. L-14012/128/98-IR(DU)]

C.R. NO. 33/99

[No. L-14012/111/98-IR(DU)]

I Party

IInd Party

[No. L-14012/110/98-IR(DU)]

Sh. H.K. Nanjegowda,
S/o Kapanaiha, Andalagere,
Tavarekere PO, Kunigal Post,
TUMKUR Dist-572123.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

[No. L-14012/112/98-IR(DU)]

C.R. NO. 34/99

[No. L-14012/4/98-IR(DU)]

[No. L-14012/5/98-IR(DU)]

[No. L-14012/6/98-IR(DU)]

[No. L-14012/7/98-IR(DU)]

[No. L-14012/8/98-IR(DU)]

[No. L-14012/2/98-IR(DU)]

[No. L-14012/3/98-IR(DU)]

I Party

IInd Party

Sh. M. Ravi,
S/o Muniyappa,
No. 142, Lalbagh, Siddapura,
Jayanagar I Block,
Behind Dr. Ambedkar Stores,
BANGALORE-560011.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 35/99

KULDIP RAI VERMA, Desk Officer.

I Party

IInd Party

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 14th June, 2001

PRESENT : HON'BLE V. N. KULKARNI

PRESIDING OFFICER

C.R. NO. 30/99

I Party

IInd Party

Smt. M.D. Sarasu,
No. 57/2, Pravin Nilaya,
NAL Road, Murugeshpalaya,
BANGALORE-560017.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 31/99

I Party

IInd Party

Sri. M. Muniswamy,
S/o Late Muniswamy,
D. No. 220/8, Bazar Street,
Cross Neelasandra,
BANGALORE-560047.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 32/99

I Party

IInd Party

Sri Thibbe Gowda,
S/o Sanne Gowda,
Sooranuhalli Village,
Atti Kulli Post,
Sathunur Hobli,
Kanakpura Taluk,
BANGALORE, Rural District.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 36/99

I Party

IInd Party

Sh. Anthuraj T,
S/o Thirisanthay,
C/o Singraj, No. 7,
Ramakka Comp.
I Main, K P Agrahara,
Nr. Magadi Road,
BANGALORE-560023.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 38/99

I Party

IInd Party

Sh. V. Chandrasekar,
S/o Veeraiah, No. 398/G,
New No. 100/7, 9th Main,
4th Cross, Vijayanagar,
BANGALORE-560040.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 39/99

I Party

IInd Party

Sh. P. Kumareshan,
No. 878, 80th Feet Road,
II Phase, Girinagar,
BANGALORE-560085.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. NO. 40/99

I Party

IInd Party

Smt. Pramila Mary Joyce,
C/o No. 87/8, 80th Feet Road,
II Phase, Girinagar,
BANGALORE-560085.

The Chairman,
Commander H.Q.
KKG Sub-area,
BANGALORE-560001.

C.R. No. 42/99

I Party	II Party
Sh. R. Mani, S/o G. Raju, No. 51/1, Motappa Street, Near Sundari Memorial School, 4th Cross, Ejipura, Viveknagar Post, BANGALORE-560047.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 50/99

I Party	II Party
Sh. A. Suresh, S/o Anben, D. No. 572, BSA Road, Periyar Nagar, BANGALORE-560005.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 45/99

I Party	II Party
Smt. T.R. Venkatesh Babu, No. 2, West Road, Gangman Quarters, BANGALORE-560047.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 51/99

I Party	II Party
Smt. K. T. Bharathi, D/o Thammappa, C/o Appaiah, M/s Canara Sales Agencies, Pai Bazar, M.G. Road, CHICKMANLUR-577101.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 46/99

I Party	II Party
Smt. Harrit Vimala, W/o Bosce, No. 9, Tulsiramdas Road, Frazer Town, BANGALORE-560005.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 52/99

I Party	II Party
Sh. A. Sagayara, S/o Anthony, D. No. 10-40, Rathanammal Compound, Irudhayapuram, Robertsonpet, KGF-563122.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 47/99

I Party	II Party
Smt. P.S. Ponnammma, W/o P.A. Uttappa, No. 1967, Sowbhagya Nilaya, Dr. Ambedkar College Road, Kavalbyrasandra, BANGALORE-560032.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 53/99

I Party	II Party
Sh. K. Nataraj, S/o K. Krishna, Shampur Main Road, Muneswarnagar, 8th Cross, BANGALORE-560045.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 48/99

I Party	II Party
Sh. K. Raghuram, S/o Kondaiah, No. 376, 3rd Cross, Viveknagar Further Extn., BANGALORE-560047.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 54/99

I Party	II Party
Smt. Lakshmi Prabha, W/o S. Shashi Kumar, No. 878 80th Feet Road, IIInd Phase, Girinagar, BANGALORE-560085.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 49/99

I Party	II Party
Smt. Y. Anitha, D/o M. Yesudas, No. 120, RBI Colony, H.A. Farm Port, Gangenahalli, BANGALORE-560032.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 56/99

I Party	II Party
Smt. Arokiamary, W/o John Bose No. 30, 14th Cross, 4th Main Road, Chinnappa Garden Layout, Basen Town, BANGALORE-560046.	The Chairman, Commander H.Q., KKG Sub-area, BANGALORE-560001.

C.R. No. 57/99

I Party

Sh. Ramachandra,
S/o Narayanappa,
No. 2/122, Lingarajapuram,
St. Thomas Town Post,
BANGALORE-560084.

II Party

The Chairman,
Commander H.Q.,
KKG Sub-area,
BANGALORE-560001.

Appearances

Advocate for I party : A. J. Srinivasan
Advocate for II party : Col. Bhupinder Singh
(Retd.)

COMMON AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred the following disputes for adjudication vide their Reference Numbers :

C.R. No. 30/99

(a) No. L-14012/98/98/IR(DU) dated 16/20-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the ID Act, 1947 and if so, whether the action of the Canteen Management run by the HQ Karnataka, Kerala and Goa Sub-Area, Bangalore in terminating the service of Smt. M.D. Sarasu is legal and justified? If not, to what relief she is entitled?”

C.R. No. 31/99

(b) No. L-14012/133/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. M. Muniswamy is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 32/99

(c) No. L-14012/109/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the ID Act, 1947 and if so, whether the action of the Canteen Management in terminating the services of Sri Thibbegowda, is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 33/99

(d) No. L-14012/106/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether activities of the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an the ID Act, 1947. If so, whether the action of the Canteen Management in terminating the service of Sri H.K. Nanjgowda is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 34/99

(e) No. L-14012/107/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether activities of the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the ID Act, 1947. If so, whether the action of the Canteen Management in terminating the service of Sri M. Ravi is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 35/99

(f) No. L-14012/134/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. N. Narayan is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 36/99

(g) No. L-14012/131/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management run by the HQ Karnataka, Kerala and Goa Sub-Area, Bangalore in terminating the services of Sh. Anthuraj T. is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 38/99

(h) No. L-14012/125/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen Run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. V. Chandrasekar, is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 39/99

(i) No. L-14012/126/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. P. Kumareshan, is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 40/99

(j) No. L-14012/124/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Smt. Pramila Mary Joyce, is legal and justified? If not, to what relief she is entitled?”

C.R. No. 42/99

(k) No. L-14012/123/98/IR(DU) dated 22-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. R. Mani is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 45/99

(l) No. L-14012/127/98/IR(DU) dated 26-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. T.R. Venkatesh Babu is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 46/99

(m) No. L-14012/128/98/IR(DU) dated 26-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala, and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating

the services of Smt. Harrit Vimla is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 47/99

(n) No. L-14012/111/98/IR(DU) dated 26-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Smt. P.S. Ponnammamma, is legal and justified? If not, to what relief she is entitled?”

C.R. No. 48/99

(o) No. L-14012/110/98/IR(DU) dated 26-04-1999

SCHEDULE

“Whether the Canteen Run by HQ Karnataka, Kerala & Goa Sub Area, Bangalore is an industry under the Industrial Disputes Act, 1947 and if so, whether the action of the Canteen Management in terminating the services of Sri K. Raghuram is legal & justified? If not, to what relief the workman is entitled?”

C.R. No. 49/99

(p) No. L-14012/112/98/IR(DU) dated 26-04-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947 and if so, whether the action of the Canteen Management in terminating the services of Smt. Y. Anitha is legal and justified? If not, to what relief she is entitled?”

C.R. No. 50/99

(q) No. L-14012/4/99/IR(DU) dated 04-05-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. A. Suresh is legal and justified? If not, to what relief the workman is entitled?”

C.R. No. 51/99

(r) No. L-14012/5/99/IR(DU) dated 04-05-1999

SCHEDULE

“Whether the Canteen run by HQ Karnataka, Kerala and Goa Sub-Area, Bangalore is an industry under

the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Smt. K.T. Bharathi is legal and justified? If not, to what relief she is entitled?"

C.R. No. 52/99

(s) No. L-14012/6/99/IR (DU) dated 04-05-1999

SCHEDULE

"Whether the Canteen Run by HQ Kamataka, Kerala and Goa Sub Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services, of Sh. A. Sagayaraj is legal and justified? If not, to what relief the workman is entitled?"

C.R. No. 53/99

(t) No. L-14012/7/99/IR (DU) dated 04-05-1999

SCHEDULE

"Whether the Canteen Run by HQ Kamataka, Kerala and Goa Sub Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. K. Nataraj is legal and justified? If not, to what relief the workman is entitled?"

C.R. No. 54/99

(u) No. L-14012/8/99/IR (DU) dated 04-05-1999

SCHEDULE

"Whether the Canteen Run by HQ Kamataka, Kerala and Goa Sub Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Smt. Lakshmi Prabha is legal and justified? If not, to what relief she is entitled?"

C.R. No. 56/99

(v) No. L-14012/2/99/IR (DU) dated 04-05-1999

SCHEDULE

"Whether the Canteen Run by HQ Kamataka, Kerala and Goa Sub Area, Bangalore is an industry under the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating Smt. Arokiamary, is legal and justified? If not, to what relief she is entitled?"

C.R. No. 57/99

(w) No. L-14012/3/99/IR (DU) dated 04-05-1999

SCHEDULE

"Whether the Canteen Run by HQ Kamataka, Kerala and Goa Sub Area, Bangalore is an industry under

the Industrial Disputes Act, 1947? If so, whether the action of the Canteen Management in terminating the services of Sh. J. Narayan is legal and justified? If not, to what relief the workman is entitled?"

(2) All the above cases are clubbed together and they are disposed off by common award.

(3) From the claim statement by the I party workman in all the above disputes, it is their case that they were working with the II party which is an industry from different dates. They continued to work, but the services were terminated and therefore in all the above cases dispute is raised.

(4) The management is one and the same and has filed detailed counter contending that the action of the management is correct. The main contention of the management is that the workmen are not Central Government Employees. A very lengthy counter is filed and it is prayed to dismiss all the above references.

(5) During the pendency of the proceedings the learned counsel for the I party has filed memo in all these cases stating that he wants to withdraw all these cases with a prayer to approach competent authority regarding the grievances of the workman involved in these 23 cases. The cases are disposed off granting permission to withdraw the disputes with an opportunity to all the I party workman to approach competent authority in future if necessary as per law.

(6) The learned counsel for the II party is present and I have also heard him.

(7) Considering the memo on the above, the following order is passed.

ORDER

Permission is granted to withdraw the cases and the cases are disposed off accordingly.

(Dictated to the L.D.C. in open court, transcribed by him, corrected and signed by me on 14th June 2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ०. 1864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार सेन्ट्रल सेरोकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/46/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workmen, which was received by the Central Government on 3-7-2001.

[No. L-42012/46/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, 'SHRAM
SADAN', III MAIN, III CROSS, II PHASE, TUMKUR
ROAD, YESHWANTHPUR, BANGALORE

Bangalore, the 18th June, 2001

PRESENT

Hon'ble V. N. Kulkarni, B. Com., LLB,
Presiding officer

C.R. NO. 32/98

I Party

Shri Swamy,
S/o Yadechegowda,
Kotehundi, Jayapura Hobli
Rayanakere Post,
Mysore-570008
(Advocate : Shri Mohan Kumar)

II Party

The Director,
Central Sericultural
Research & Training
Centre, Srirampuram,
Mysore-570008
(Advocate : Shri R. Guru
Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/46-97-IR(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Krishna, Casual Labour, w.c.f. 30-4-1990 ? If not, to what relief the workman is entitled to ?”

2. First party was working with the second party. His services were terminated so this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Disputes Act, 1947 as stated in para 2 of the Claim Statement. The first party workman was employed by the second party management as casual labour from 1-6-1987 and he was working in Seed Technology. His services were terminated on 30-4-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows:

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work during November 1987 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MWII are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined. I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I and II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them

categorically stated that they have no document to show that they were given appointment order. They have no document to show that their service were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalaberraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ०. 1865—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/47/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training

Centre and their workmen, which was received by the Central Government on 3-7-2001.

[No. L-42012/47/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT 'SHARM SADAN', III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB,
Presiding Officer

Bangalore, the 18th June, 2001

C.R. No. 31/98

I Party :	II Party :
Shri Krishna,	The Director,
C/o Ayyappa, Kote Hundy.	Central Sericultural Research
Rayanakere Post	& Training Centre.
Mysore-570008	Srirampuram, Mysore-570008
(Advocate : Shri Mohan Kumar)	(Advocate : Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/47/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule .

SCHEDULE

“Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Krishna, Casual Labour, w.e.f. 30-4-1990? If not, to what relief the workman is entitled to?”

2. First party was working with the second party. His services were terminated so this disputes is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Disputes Act, 1947 as stated in para 2 of the claim statement. The first party workman was employed by the second party management as casual labour from 1-5-1986 and he was

working in Seed Technology. His services were terminated on 30-4-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed counter.

6. The case of the second party in brief is as follows:

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 1-5-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MW I and MW II are examined.

9. It is seen that MW I is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined, I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to P.A. transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार 'सेन्ट्रल सेरीकल्चरल रिसर्च एण्ड ट्रेनिंग सेन्टर' के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/48/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/48/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
TUMKUR ROAD, YESHWANTHPUR,
BANGALORE

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB.
Presiding Officer.

CGIT-Cum-Labour Court,

Bangalore

C.R. No. 34/98.

I PARTY :

Shri Chikkanna,
S/o Madaiah,
Door No. 12,
Manandavadi Road,
Mysore-570008

(Advocate Shri Mohan Kumar)

II Party

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008
(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/48/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Chikkanna, Casual Labour, w.e.f. 11-7-1992? If not, to what relief the workman is entitled to?"

2. First party was working with the second party. His services were terminated to this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act 1947 as stated in para 2 of the claim statement. The first party workman was employed by the second party management as casual labour from 15-3-1972 and he was working in Seed Technology. His services were terminated on 11-7-1992. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed counter.

6. The case of the second party in brief is as follows :

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 17-6-1980 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MW II are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the the evidence carefully. Against

this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeralah, Siddalah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined. I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalaberraiiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictacted to P.A. transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-01 को प्राप्त हुआ था।

[सं. एल-42012/49/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court.

Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-01.

[No. L-42012/49/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHARM SADAN', III MAIN, III CROSS, II PHASE,
TUMKUR ROAD, YESHWANTHPUR, BANGALORE**

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB,
Presiding Officer.

CGIT-Cum-Labour Court,

Bangalore

C.R. No. 29/98

- I Party** : Shri Siddaiah,
S/o Sidde Gowda,
Kotehundi,
Rayanakere Post,
Mysore-570008
(Advocate Shri Mohan Kumar)
- II Party** : The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008
(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/49/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Siddaiah, Casual Labour, w.e.f. 31-1-1990? If not, to what relief the workman is entitled to ?"

2. First party was working with the second party. His services were terminated to this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act 1947 as stated in para 2 of the claim statement. The first party workman was employed by the second party management as casual labour from 1-2-1985 and he was working in Seed Technology. His services were terminated on 31-3-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filled counter.

6. The case of the second party in brief is as follows :

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on February, 1985 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MW II are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined. I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workmen was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than

9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्द्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/50/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/50/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHARM SADAN', III MAIN, III CROSS, II PHASE,
TUMKUR ROAD, YESHWANTHPUR,
BANGALORE**

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, L.L.B.

Presiding Officer

CGIT-cum-Labour Court,

Bangalore

C.R. No. 33/98

IPARTY

: Shri Puttabasava,
S/o Bundaiah,
Dhangalli,
Jayapura Hobli,
Mysore-570008

(Advocate Shri Mohan Kumar)

II PARTY

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008

(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/50/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Puttabasava, Casual Labour ? If not, to what relief the workman is entitled to ?"

2. First party was working with the second party. His services were terminated so this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act 1947 as stated in para 2 of the Claim Statement. The first party workman was employed by the second party management as casual labour from 1-5-1986 and he was working in Seed Technology. His services were terminated on 31-12-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows :

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 1-5-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MWII are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana,

Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined, I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalaberraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workmen was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected

(Dictated to PA transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/51/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training

Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/51/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHRAM SADAN', III MAIN, III CROSS, II PHASE,
TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB
Presiding Officer.

CGIT-Cum-Labour Court,

Bangalore

C.R. No. 35/98

IPARTY

: Shri Kalabeeraiah,
S/o Kalabeeraiah,
Dhangali Post,
Jayapura Hobli
Mysore-570008

(Advocate Shri Mohan Kumar)

II PARTY

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008

(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/51/97/IR(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Kalabeeraiah, Casual Labour, w.c.f. 31-12-1990 If not, to what relief the workman is entitled to?"

2. First party was working with the second party. His services were terminated so this dispute is raised.

3. First part filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act, 1947 as stated in para 2 of the claim

statement. The first party workman was employed by the second party management as casual labour from 1-4-1986 and he was working in Seed Technology. His services were terminated on 31-12-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed counter.

6. The case of the second party in brief is as follows :

7. There is not termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 14-6-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MWII are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined, I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workmen was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to P A transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का० आ० 1870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/52/97-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/52/97-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHRAM SADAN', III MAIN, III CROSS, II PHASE,
TUMKUR ROAD, YESHWANTHPUR, BANGALORE**

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB,
Presiding Officer.

CGIT-Cum-Labour Court, Bangalore

C.R. No. 40/98

I PARTY

: Shri Sathisha
S/o Chanankaiah, Changahelli,
Dhanagalli Post,
Jayapura Hobli,
Mysore-570 008
(Advocate Shri Mohan Kumar)

II Party

: The Director,
Central Sericultural Research
and Training Centre,
Srirampuram,
Mysore-570008
(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/52/97/IR (DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Sathisha, Casual Labour, w.e.f. 26-6-1997 ? If not, to what relief the workman is entitled to ?"

2. First party was working with the second party. His services were terminated so this dispute is raised.

3. First part filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial dispute Act, 1947 as stated in para 2 of the claim statement. The first party workman was employed by the second party management as casual labour from 1-5-1989 and he was working in Seed Technology. His services were terminated on 26-6-1991. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows :

7. There is not termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 20-6-1989 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MW1 and MW II are examined.

9. It is seen that MW1 is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeralah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeralah, Satish and Shivana are cross examined, I

have read the evidence and scrutinised the entire material carefully. With the evidence of MW I and II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeralah admits in his cross examination that after December, 1990 he did not go for work. With the cross examination of some of the workman it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to P.A. transcribed by her corrected and signed by me on 18-6-2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकटित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/53/97-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research and Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/53/97-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer.

नई दिल्ली, 3 जुलाई, 2001

AWARD

को०आ० 1872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्द्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/54/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1872.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/54/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT 'SHRAM SADAN', III MAIN, III CROSS, II PHASE, TUMKURROAD, YESHWANTHPUR, BANGALORE

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com, LLB,
Presiding Officer.

CGIT-Cum-Labour Court,
Bangalore,

C.R. No. 30/98

I PARTY

: Shri Shivana,
S/o Mallappa,
Sreerampura,
N.H. Palya Post,
Mysore-570 008.
(Advocate Shri Mohan Kumar)

II Party

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008.
(Advocate-Shri R. Guru Rajan)

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/54/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Shri Shivana, Casual Labour, w.e.f. 30-4-1990 ? If not, to what relief the workman is entitled to ?”

2. First party was working with the second party. His services were terminated to this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act, 1947 as stated in para 2 of the Claim Statement. The first party workman was employed by the second party management as casual labour from 1-5-1986 and he was working in Seed Technology. His services were terminated on 30-4-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows :

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 1-5-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MW II are examined.

9. It is seen that MWI is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case some other cases have

filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalebeeraiah, Sathisha and Shivana are cross examined, I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not bound by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 18-6-2001).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का० आ० 1873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/55/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1873.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court,

Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/55/97-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHRAM SADAN', III MAIN, III CROSS, II PHASE,
TUMKURROAD, YESHWANTHPUR, BANGALORE**

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com., LL.B.,
Presiding Officer.

CGIT-Cum-Labour Court,
Bangalore.

C.R. No. 27/98

IPARTY

: Shri Basavaraju,
S/o Kunnamadegowda,
Kotehundi,
Rayanakere Post,
Mysore-570 008.

(Advocate Shri Mohan Kumar)

II Party

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570 008.

(Advocate Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Dispute Act, 1947 referred this dispute vide order No. L-42012/55/97/IR/(DU) dated 1-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the service of Shri Basavaraju, Casual Labour, w.e.f. 31-12-1988 ? If not, to what relief the workman is entitled to ?"

2. First party was working with the second party. His services were terminated to this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act 1947 as stated in para 2 of the claim statement. The first party workman was employed by the second party management as casual labour from 8-12-1986 and he was working in Seed Technology. His services were terminated on 31-12-1988. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows :

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 8-12-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of 10 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MW I and MW II are examined.

9. It is seen that MW I is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalabeeraiah, Satish and Shivana are cross examined, I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December, 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of 10 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का० आ० 1874.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/56/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1874.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-2001.

[No. L-42012/56/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
'SHRAM SADAN', III MAIN, III CROSS, II PHASE,
TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com., LLB.,
Presiding Officer,
CGIT-Cum-Labour Court,
Bangalore

C.R. No. 39/98

IPARTY

Shri Jayamma,
D. No. 83, Devayyana Hundi,
Nachanahalli Palya Post,
Mysore-570 008

(Advocate Shri Mohan Kumar)

IIPARTY

The Director,
Central Sericultural Research &
Training Centre,
Srirampuram,
Mysore-570008

(Advocate Shri R. Gauri Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/56/97/IR (DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services of Smt. Jayamma, Casual Labour, w.e.f. 26-8-1987 ? If not, to what relief the workman is entitled to ?”

2. First party was working with the second party. His services were terminated so this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Dispute Act, 1947 as stated in para 2 of the Claim Statement. The first party workman was employed by the second party management as casual labour from 1-1-1986 and he was working in Seed Technology. His services were terminated on 26-8-87. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed Counter.

6. The case of the second party in brief is as follows :

7. There is not termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 25-6-1986 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MW I and MW II are examined.

9. It is seen that MW I is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalebeeraiah, Satish and Shivana are cross examined. I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workman referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalabeeraiah admits in his cross examination that after December, 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to PA, transcribed by her, corrected and signed by me on 18-6-2001)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2001

का०आ० 1875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सेरीकल्चरल रिसर्च एवं ट्रेनिंग सेन्टर के प्रबंधन के संबंध में और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/57/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd July, 2001

S.O. 1875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Sericultural Research & Training Centre and their workman, which was received by the Central Government on 3-7-01.

[No. L-42012/57/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, 'SHRAM SADAN', III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 18th June, 2001

PRESENT

Hon'ble Shri V. N. Kulkarni, B. Com., LLB,
Presiding Officer

CGIT-Cum-Labour Court,
Bangalore

C.R. No. 28/98

I PARTY

: Shri Arshad Ahmed,
No. 1145/2, 7th Main,
I cross, S.H. Road,
Vidyaranyapuram,
Mysore-570008

(Advocate Shri Mohan Kumar)

II Party

: The Director,
Central Sericultural Research
& Training Centre,
Srirampuram,
Mysore-570008

(Advocate-Shri R. Guru Rajan)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/57/97/IR/(DU) dated 1/16-4-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Central Sericultural Research and Training Institute, Mysore, is justified in terminating the services

of Shri Arshad, Casual Labour, w.e.f. 31-1-1997 ? If not, to what relief the workman is entitled to ?"

2. First party was working with the second party. His services were terminated to this dispute is raised.

3. First party filed Claim Statement.

4. According to the Claim Statement by the first party, this workman is workman under Section 2(s) of the Industrial Disputes Act, 1947 as stated in para 2 of the Claim Statement. The first party workman was employed by the second party management as casual labour from 1-7-1986 and he was working in Seed Technology. His services were terminated on 31-1-1990. He worked continuously for more than 240 days and termination is illegal. Therefore he has prayed to pass award in his favour.

5. The second party filed counter.

6. The case of the second party in brief is as follows:

7. There is no termination as alleged by the first party. The dispute is not maintainable. There was a need for engaging certain casual labourers and there was no permanent vacancies. Therefore, first party was taken to work on 19-1-1987 and he was provided the work on daily wages. He has not worked continuously as alleged by him. There is a delay of more than 9 years in raising the dispute. Second party for these reasons has prayed to reject the reference.

8. It is seen from the records that in this case and similar other cases MWI and MW II are examined.

9. It is seen that MW 1 is examined as witness in other cases also.

10. First party and counsel remained absent. I have heard second party. I have gone through the relevant documents and read the evidence carefully. Against this first party workman of this case and some other cases have filed affidavits. In all, the affidavits of Sathisha, Venkataramana, Jayamma, Chikkkanna, Swamy, Kalabeeraiah, Siddaiah and Shivana are before the court.

11. It is seen from the records that Siddaiah, Swamy, Kalbeeraiah, Satish and Shivana are cross examined. I have read the evidence and scrutinised the entire material carefully. With the evidence of MW I & II it is clear that the workman has not worked for more than 240 days. This workman was not taken for duty because he was not entitled according to the seniority list. If we strictly scrutinise the cross examination of workmen referred earlier, all of them categorically stated that they have no document to show that they were given appointment order. They have no document to show that their services were terminated. Some of them have stated that they were not borned by Employment Exchange and their names were not sponsored by Employment Exchange. Kalaberraiah

admits in his cross examination that after December 1990 he did not go for work. With the cross examination of some of the workmen it is clear that they are only casual labourers and this workman was casual labour and he was not terminated. There is no merit in this dispute.

12. I have considered the entire material carefully and I am of the opinion that there is a delay of more than 9 years in raising this dispute and the workman has failed to prove that he is entitled for any work and he is terminated. Accordingly there is no merit in this reference and I proceed to pass the following order :

ORDER

The reference is rejected.

(Dictated to P.A. transcribed by her, corrected and signed by me on 18-6-2001.)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 5 जुलाई, 2001

का०आ० 1876.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नवल डॉक यार्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापटनम् के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-14012/18/99-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 5th July, 2001

S.O. 1876.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Navel Dock Yard and their workman, which was received by the Central Government on 5-7-2001.

[No. L-14012/18/99-IR(D-U)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT VISAKHAPATNAM

PRESENT : SRIK. VEERAPU NAIDU, B.Sc., B.L.,
CHAIRMAN & PRESIDING OFFICER

Dated : 8th day of June, 2001.

I.T.I.D. (C) 18/99

REFERENCE No. L-14012/18/99/IR(DU) Dated :
22-7-99

Between :

A. Samba Murthy,
7 Maghna, (Servant Quarters),
Naval Park,
Visakhapatnam (A.P.)-530 014.

... Workman.

AND

The Admiral Superintendent,
Naval Dock Yard,
Visakhapatnam-14.

..Management.

This dispute coming on for final hearing before me in the presence of Sri A. V. Sambasiva Rao and Sri A. S. Rama Sarma, advocates for workman and Sri D. Ramesh, Government Pleader for management, Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is a reference made by the Central Government U/Sec. 10(1)(d) of the I.D. Act, for adjudication of the dispute and it is as follows :

“Whether the action of the management of Naval Dock Yard, Visakhapatnam in terminating the services of Sri A. Samba Murthy, Welder. HSK-I, T. No. 4076 (Fabrication Department) is legal and justified? If not, to what relief the workman is entitled to?”

2. The case of the workman is that he joined as casual labour in the management in the year 1969 and promoted as Welder-II and continuously served as such, since 14-8-93, the date of termination. The workman was not served with any domestic enquiry and there is no opportunity to defend his case. No. copy of the enquiry report was furnished to him. The final orders of removal is invalid and the same is liable to be set aside and the workman is to be reinstated with back wages.

3. On the other hand, it is the case of the management that the petitioner was a habitual absentee and he was absent for 1490 days during the period from 13-11-84 to 14-8-93 on 12 occasions as mentioned in the counter. The workman was imposed several punishments such as warning, censure, withholding of increment and reduction in rank from Welder HSK-I to Welder HSK-II for the alleged misconducts and all these punishments have not effect on the workman and again he was unauthorisedly absent from 4th June, 1990 to 11th March, 1991 and chagememo was issued and it was sent to his house address and it was returned by the postal authorities as the 'Addressee absent returned to sender'. Therefore, a regular enquiry officer was apponited and several notices were sent by the enquiry officer to the workman which

were returned with the remarks 'addressee avoiding to take delivery, addressee left etc.' An ex parte enquiry was conducted and charges were held proved. On considering the report, the final orders removing the petitioner was passed on 14th August, 1993 by the Admiral Superintendent, Naval Dock Yard, for the unauthorised absence from 4-6-90 to 11-3-91 i.e. for a period of 9 months and odd. It is also the further case of the management that all the communications addressed to the workman are returned undelivered with the remarks such as 'addressee left', 'avoiding to take delivery' and 'not claimed'. The workman has got an opportunity to prefer appeal within 45 days from the date of receipt of the orders of removal but he preferred appeal after a lapse of 3 years period and it was not considered. The action taken by the management is correct and it needs no interference.

(4) The management examined MW1 and got marked Ex.M1 to M16. On behalf of the workman, the workman is examined as WW1 and no documents are marked.

(5) Heard both sides.

(6) The point that arises for consideration in this case is :

Whether the petitioner/workman is entitled for reinstatement with back wages as prayed for?

(7) The petitioner was removed from service for the unauthorised absence from 4-6-90 to 11-3-91. Ex.M1 is the charge memo and the same was not served on the workman. Hence Ex. M2 xerox copy of the returned postal card with endorsement is marked. Ex. M2 is xerox copy of the appointment of enquiry Officer. Exs. M4 to M7 are the enquiry notices which were returned Ex. M8 are the xerox copies of the returned endorsements of the copies of notices. Ex. M9 is the xerox copy of the ex parte proceedings conducted by the enquiry officer. Ex. M10 is the xerox copy of the returned postal acknowledgement. Ex. M11 is the final order removing the workman. Ex. M12 is the xerox copy of the enquiry report. Ex. M13 is the xerox copy of the orders and appeal petition filed by the workman and Ex. M14 is the leave application submitted by the workman on 12-3-91 for 9 months 7 days from 4-6-90 to 11-3-91, the charge period and he also filed a sick certificate and fit certificate along with Ex. M14. Ex. M15 is the inter departmental correspondence.

(8) It is an admitted fact that the workman was unauthorisedly absent for 1490 days during the period from 13-11-84 to 13-11-93. The period of charge of the unauthorised absence of the workman is from 4-6-90 to 11-3-91. In the counter it is stated that the workman was absent unauthorisedly for 1490 days for 12 times during the period from 13-11-84 to 14-8-93 and the details are as follows as mentioned in the counter :

S.No.	Period of absence	Duration
1.	13-11-84 to 17-01-85	2 months & 4 days
2.	04-02-85 to 10-04-85	2 months & 6 days
3.	15-04-85 to 26-04-85	12 days
4.	07-04-86 to 12-04-86	6 days
5.	23-04-86 to 20-05-86	27 days
6.	30-06-86 to 23-07-86	24 days
7.	14-10-86 to 12-01-87	3 months
8.	11-05-87 to 14-07-87	2 months
9.	14-12-87 to 03-06-88	3 months
10.	<u>04-06-90 to 11-03-91</u>	<u>9 months</u>
11.	16-08-91 to 04-01-92	5 months
12.	25-02-92 to 14-08-93	17 months & 21 days

(till the date of removal from service)

(9) On the other hand, the workman as WW1 admitted his cross-examination that he remained absent for 1490 days in different spells. The above said periods of absence clearly goes to show that he was not only absent prior to charge period but also after the charge period for a period of 5 months from 16-8-91 to 4-1-92 and 17 months 21 days from 25-2-92 to 14-8-93, the date of removal from service.

(10) Thus, the charge framed against the workman in even admitted in the evidence by WW12. Therefore, the contention that no opportunity was given to the workman in the enquiry has no legs to stand. Even otherwise, the Exs. M4 to M7 return endorsement clearly goes to show that the workman was either evading or absenting in the address given by him. Further, the workman stated in his cross-examination that he shifted his residence from Malkapuram to China Waltair and he intimated the said fact to the management but he did not file any office copy of the same. He admitted that he received the termination orders i.e. original of Ex. M 11. Further it is suggested to him that he did not inform the change of the address to the management. When he received the termination orders, the original of Ex. M11, it bears the address of the workman at Malkapuram and Ex. M8 copies of enquiry notice were also sent to the same address through registered post with acknowledgement due. Therefore, the workman seems to have been avoided to receive the enquiry notices. Whatever it may be, there is ample evidence to the management to show that the workman is habitually unauthorised absentee and even for the charge period also he was unauthorisedly absented. However, it is elicited in the cross-examination of MW1 that the workman reported duty on 12th March, 1991 and submitted sick and fit certificates along with his

leave application and it is Ex. M 14. It is also admitted by MW1 that the workman submitted sick certificate and the leave letter informing sick due to mental inability. Here Ex. M 14, leave letter contains the sick certificate of the workman shown that the workman was suffering from Rheumatic Pains. There is no material on record, to show that the workman have been suffering with any mental disability. Whatever it may be this leave application was also submitted after the period of unauthorised absence.

(11) Therefore, the material adduced by both the parties would clearly establishes the fact that the workman is a habitual unauthorised absentee for long periods at different spells and he was absent for 1490 days in a span of 9 years from 1984 to 1993 and it is also brought on record that the workman was not only absent for only 9 months 7 days the charge period and he was also absent on several occasions prior to the charge period and on two occasions even after the charge period. Therefore, the learned counsel appearing for the management contends that the punishment of removal is neither harsh nor disproportionate and it is just and proper.

(12) On the other hand, the learned counsel appearing for the workman contends that mere unauthorised absence does not amount to misconduct and the capital punishment of removal is too harsh. The absence for the charge period, according to the workman, is on account of his illness as he was suffering from Rheumatic pains and it is evidenced by a certificate namely a sick certificate issued by a private medical practitioner Dr. D.S.N. Murthy. The petitioner did not choose to obtain treatment in any Government hospital and the workman also did not assign any reason for not applying leave even after he fell sick or even during his sickness. Therefore, under the circumstances, it is a clear case of unauthorised absence of the workman for the period from 4-6-90 to 11-3-91 besides that the workman in the present case is a habitual unauthorised absentee. Therefore, the punishment of removal of the workman imposed in this case is neither harsh nor disproportionate and there are no other extenuating or any mitigating circumstances, even to impose a lesser punishment. Hence I answer the reference in favour of the management and against the workman.

(13) In the result, nil award is passed and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 8th day of June, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE :

WITNESSES EXAMINED :

FOR WORKMAN : FOR MANAGEMENT:
WW 1 : A. Samba Murthy MW1 : S. Seetha Rama Rao

DOCUMENTS MARKED :

FOR WORKMAN : NIL

FOR MANAGEMENT :

Ex. M1 3-7-91 : Xerox copy of charge memo.

Ex. M2 : Xerox copy of returned postal endorsement.

Ex. M 3 : 12-2-92 : Xerox copy of order reg. appointment of EO.

Ex. M 4 : 15-11-91 : Xerox copy of notice of enquiry.

Ex. M 5 : 11-12-91 : Xerox copy of notice of enquiry.

Ex. M 6 : 18-2-92 : Xerox copy of notice of enquiry.

Ex. M 7 : 13-3-92 : Xerox copy of notice of enquiry.

Ex. M 8 : Xerox copy of undelivered letter with Postal Endorsement.

Ex. M 9 : 30-4-92 : Xerox copy of exparte enquiry proceeding.

Ex. M 10 : Xerox copy of postal acknowledgement.

Ex. M 11 : 14-8-93 : Xerox copy of final order passed by Vice-Admiral Admiral, Supdt.

Ex. M 12 : Xerox copy of enquiry report.

Ex. M 13 : 6-12-96 : Xerox copy of letter to workman by management.

Ex. M 14 : Leave letter /application with medical certificates.

Ex. M 15 : 12-3-2001 : Inter-departmental covering letter with regard to leave applications.

नई दिल्ली, 5 जुलाई, 2001

का०आ० 1877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑल इंडिया इन्स्टीट्यूट आफ फिजीकल मेडीसिन एण्ड रीहेबिलिटेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/182/99-आई.आर.(डो.यू.)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi the 5th July, 2001

S.O. 1877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No-II.

Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of All India Instt. of Physical Medicine and Rehabilitation and their workman, which was received by the Central Government on 5-7-2001.

[No. L-42012/182/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI.

PRESENT:

S.N. SAUNDANKAR, PRESIDING OFFICER

REFERENCE NO. CGIT-2/22 of 2000.

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF DIRECTOR, ALL INDIA INSTT. OF
PHYSICAL MEDICINE AND REHABILITATION

Director, All India Instt. of Physical
Medicine & Rehabilitation,
Haji Ali Park, K. Khadye Marg,
Mahalaxmi,
Mumbai-400 034.

AND

their workmen

Sh. Mohan P. Gore,
C.G.S. Colony,
Sector No. 6, Bldg. No. 202,
Room No. 2429, Antop Hill,
Mumbai-400 037.

APPEARANCES:

FOR THE EMPLOYER : No Appearance.

FOR THE WORKMAN : Mr. R. B. Vaidya, Advocate.

Mumbai, dated 20th June, 2001.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-42012/182/99/IR (DU), dtd. 27-1-2000, have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947.

"Whether the action of the management of All India Institute of Physical Medicine and Rehabilitation Mumbai by terminating the services of the workman Mr. Mohan P. Gore w.e.f. 29-11-97 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference notices were sent to the parties concerned. Pursuant to that workman Mr. M. P.

Gore appeared vide acknowledgment (Exhibit-4.) However, the management of All India Institute of Physical Medicine and Rehabilitation, Mumbai though served vide acknowledgment (Exhibit-3), none appeared on its behalf. Workman put his Statement of Claim on 15-1-2001 at Exhibit-7, contending therein that he was employed as semi-skilled worker since August 1994 and that he was abruptly removed from the service on 30-11-98. He further contended that he had moved the management, but in vain and thereafter he approached the Assistant Labour Commissioner (Central) Mumbai, however the Conciliation finally failed on 31-8-99.

3. Matter was fixed for appearance and filing of Written Statement on behalf of the management. However till today, none appeared on their behalf nor put Written Statement though sufficient time given as clearly depicted from the Rojnama. Since the management though served did not appear, the workman was directed to file affidavit in support of his claim to decide the reference Ex-parte and consequently he has filed his affidavit at Exhibit-9.

4. Mr. Gore affirmed that he was a permanent semi-skilled employee since last five to six years on the pay roll of All India Institute of Physical Medicine and Rehabilitation and that he has been abruptly discontinued from service w.e.f. 30-11-98. He stated that his last drawn wages were Rs. 3,997/- per month. He has been dismissed illegally and therefore he be reinstated with full back wages and continuity of service. This testimony has gone unchallenged. It is clearly seen from the above said unchallenged testimony that action of the management in terminating the services of Mr. M. P. Gore is not legal and proper. Therefore, he is entitled to reinstatement with full back wages and continuity in service. Hence the order:

ORDER

The action of the management of All India Institute of Physical Medicine and Rehabilitation, Mumbai in terminating the services of Mr. Mohan P. Gore is not just and proper.

The management to reinstate the workman in service and pay him full back wages with continuity in service.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का.आ. 1878.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मलेरिया रिसर्च सेन्टर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/131/90-आई.आर.(डि.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Malaria Research Centre and their workman, which was received by the Central Government on 6-7-2001.

[No. L-42012/131/90-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT
JABALPUR

CASE NO. CGIT/LC/R/22/91

PRESIDING OFFICER : SHRI K. M. RAI

Shri Chandra Shekhar Tiwari,
Erstwhile Field Lab/Attendant
Resident of Kali Math,
Amanpur, Jabalpur

Applicant

Versus

The Director,
Malaria Research Centre,
22, Sham Nath Marg,
New Delhi.

Non-applicant

AWARD

Delivered on this 16th day of April, 2001

1. The Government of India, Ministry of Labour vide order No. L-42012/131/90-IR DU dated 13-2-91 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of Malaria Research Centre, New Delhi in terminating the services of Shri Chandra Shakhari Tiwari, Field/Lab attendant vide their order dated 23-1-90 is justified? If not, what relief has is entitled to?

2. The case for the workman/applicant is that he was appointed as field/lab attendant w.e.f. 20-4-87 by the management/non applicant vide appointment order Annexure-I. As per the terms and conditions of appointment order, the appointment to the said post was temporary and co terminable with the project or as long as his services were required in connection with this scheme. The scheme/project for which the applicant was appointed still continues. The other persons who were appointed with the applicant or thereafter are still serving with the existing project. The applicant was treated and promised

that he held a permanent post. The performance of the applicant/workman had always been to the satisfaction of the management/non-applicant. There had been no complaint or adverse communication against his performance.

3. The workman further alleges that he was elected the president of All India Malaria Research Centre Employees Association, a registered body, branch at Jabalpur and affiliated to INTUC. In this capacity he was always representing the grievances of the employees for their redressal and therefore the management was annoyed with him. The non-applicant no. 2 & 3 used to practice unfair labour practice which was always objected by the workman. Therefore with malafide intention, the non-applicants no. 2 & 3 arbitrarily terminated his services w.e.f. 23-1-90 vide order Annexure A-6. Prior to termination of service neither any enquiry was conducted against him nor any notice or retrenchment compensation was given to him. He had continuously worked for more than 240 days in a calendar year. The non-applicants have made several allegations against him in their written statement which amounts to misconduct and therefore prior to termination of service, the DE is mandatory which was not done by the non-applicants. He filed a complaint before the ALC(C) challenging the validity of the termination order. Therefore the dispute has been referred to this tribunal for adjudication. The termination order is illegal, arbitrary, unreasonable and therefore deserves to be quashed. He is entitled to reinstatement with back wages.

4. The case for the non-applicants/managements is that the workman/applicant was never treated by the management as holder of permanent post nor any assurance in this connection was given to him. The petitioner was employed for the scheme of integrated disease vector control programme only. As soon as the work of the scheme is over, it will be wound up and put to an end. In view of this fact, the staff is temporarily employed only for the performance of the scheme and the services of the staff are co-terminus with the cessation of the scheme. The scheme is still continuing and some persons, who were employed by the non-applicants are still continuing with the scheme. On this basis only the applicant cannot claim any advantage of continuing in the employment. The performance of the applicant had never been satisfactory. All India Malaria Research Centre employees Association, Branch, Jabalpur has not been recognised by the non-applicants and therefore the applicant cannot get any advantage being office bearer of the said Union. The non-applicants/management further alleges that the non-applicants No. 2 & 3 had never resorted to unfair labour practice as alleged by the applicant. The applicant's termination order is perfectly legal and proper. The services of the applicant were not terminated due to any malafide intention or revengeful attitude of the non-

applicants. The performance of the applicant had never been satisfactory. The applicant was not attending his duties properly and he was never punctual to his job. In spite of several intimation given by the non-applicants in this respect, he never mended his habit. He had been defaulting in attending his duty right from 1988. In this connection, memo dated 16-8-88 and 27-9-88 were issued to him. The applicant submitted his reply on 22-8-88. Thereafter some more memos were issued to him on 27-3-89, 1-3-89, 2-8-89 and on 21-7-89. The applicant was always negligent to his duties and was not available with the full team to start for the destination. Such a worker was not useful to the scheme and therefore his services were terminated as not required. His efforts were to frustrate the scheme rather than working devotedly with the same. The termination order dated 23-1-90 is not in violation of natural justice. The Malaria Research Centre is not an industry and the applicant is not a workman. In view of this fact, the provisions of the Industrial Dispute Act had no application in the instant case. The reference is accordingly illegal and deserves to be answered in negative. The termination order passed by the non-applicants against the applicant is perfectly legal and does not require any interference. The applicant is not entitled to reinstatement with back wages or any relief as prayed by him.

5. On the conclusion of the case, my learned predecessor passed award on 1-12-99 which was challenged before the Honourable High Court of MP vide WP No. 1783/90. On 1-11-2000, the High Court passed the order setting aside the award passed by this tribunal on 1-12-99 and directed to decide the case afresh and to give a clear finding whether or not the non-applicant, Malaria Research Centre is an industry within the meaning of Sec-2(a) of I.D. Act, 1947 as this issue was not clearly decided by this tribunal. In view of this direction of the Honourable High Court, the matter is being final by disposed of.

6. The following issues arise for determination in this case :—

1. Whether the non-applicant No. 1 Malaria Research Centre is an industry or not under Sec-2(j) of I.D. Act, 1947 ?
2. Whether the services of applicant were terminated by the non-applicants on 23-1-90 illegally ?
3. Whether the workman is entitled to reinstatement with back wages ?
4. Relief and costs ?
7. Issue No. 1:

The main controversy in this case is as to whether the Malaria Research Centre is an industry or not?

“Industry” has been defined under Sec-2(j) of I.D. Act, 1947 as under :

“Industry” means any business trade, undertaking manufacture or calling of employers and includes any calling, service, employment handicraft or industrial occupation or avocation of workman.

“Industry” has to satisfy triple test to become an “Industry” as under :—

1. Systematic activity.
2. Cooperation between employer and employee.
3. Production and/or distribution of goods and services calculated to satisfy human wants and services. If these tests are satisfied prima face there is an “Industry” the absence of profit motive is irrelevant wherever the undertaking is public joint, private or other sectors.

9. As far as the research institutions are concerned the Supreme Court has held in Bangalore Water Supply and Sewerage Board etc. and A. Rajappa and others etc. as under :—

“Does Research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para scientists and other personnel. Is scientific research service? Undoubtedly it is its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age, nothing has more cash value as intangible goods and invaluable services, than discoveries. For instance the discoveries of Thomas Alva Edison made him fabulously rich, it has been said that his brain had the highest reach value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors he did not have to wait to get his reward in heaven he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which founded the institute itself, it can be regarded as an organisation propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit motive, are industries.”

10. Taking the above said pronouncement of the Honourable Supreme Court, we have to look into the evidence of the parties in the instant case. The additional affidavit of Dr. Neeru Singh, Dy. Director and incharge, Malaria Research Centre, Jabalpur is relevant for the decision of the issue as to whether the Malaria Research

Centre is an industry or not? Her statement goes to show that the Research work in Malaria Research Centre is being systematically carried out to control the Malaria and to discover the new formula to eradicate the same. For this purpose the samples of blood from different persons are taken by the Lab Assistant of the Centre and those samples are scientifically analysed in the laboratories to find out the Cause of Malaria and to cure the same by introducing medicines in this respect after discovering new formula. The regular experiments are being done in the laboratories by the Lab Assistants and the scientists. After making the scientific analysis they introduce new medicines to control and eradicate the Malaria. The reports in this connection are annually published to acquaint the Head Office regarding the research work done by the centre. Dr. Neeru Singh has clearly admitted in para-8 of her statement on 16-2-2001 that phizer pharmaceutical company had made some payments to the Director Malaria Research Centre, Delhi on different dates. The said company manufactures medicine for Malaria and sell the same in the market. From the statement of Dr. Neeru Singh it appears that the formula discovered by the Malaria Research Centre, are sold to the pharmaceuticals. Company to manufacture medicine to control and eradicate Malaria from the different parts of the country. For his purpose, the pharmaceutical company makes payment to the Malaria Research Centre as they are benefitted by the discoveries made known to them for manufacturing medicines to control malaria. This is nothing but activities like business and trade. This view is being supported by circular Ex W-10. The clause V of the circular is regarding the terms and conditions of the amount paid to the Malaria Research Centre reads as under :

“Receipts realised by the Project Officer and the sale proceeds if any, will be remitted to the counsel as miscellaneous receipts and should not be utilised for meeting expenditure in the scheme. This citation makes it abundantly clear that the Malaria Research Centre definitely sells the research formula to a respective pharmaceuticals company to manufacture the medicines of Malaria etc. It means this activity is being carried like business and trade by the co-operation of the employer and employees of the centre.

11. There is another important citation on page-3 of the circular Ex W-10 as quoted in verbatim. “The counsel shall have the right to take out patents in respect of inventions/discoveries made under the scheme/project financed by the counsel. The officer incharge of the staff employed on IMRC scheme shall not apply or obtain patents for any invention/discovery made by them without prior approval of the council.” The Malaria Research Centre carries on its research activities under the control of Indian Council of Medical Research which pays the grant to the same. The aforesaid condition for taking out patents in respect of any inventions/discoveries done by the Malaria

Research Centre is a part of the business and trade. It means the Malaria Research Centre is systematically engaged in carrying out the research work to make inventions/discoveries for helping the manufacture of new medicines to check the malaria like business and trade. It cannot be said that the centre carries on only research work and nothing else.

12. The discoveries is Malaria Research Centre are being sold for consideration in the industrial markets as has been established by the statement of Dr. Neeru Singh documents and circular of Indian Council of Medical Research Ex. W-10. Such discoveries are patented and sold to the pharmaceutical company for manufacturing medicines and selling the same in the market for human service. The centre is benefitted by the systematic activity modelled on cooperation between employer and employees and calculated to throw up discoveries and inventions and useful solutions which benefit industrial relations and nations in terms of goods and services and wealth. There might not be profit motive behind such discoveries but the activities carried on by it comes under the definition of "Industry". The pronouncement of Supreme Court in Bangalore water supply and sewerage case is fully applicable in the present case.

13. From the Material on record it becomes amply clear that the Malaria Research Centre is carrying on systematic Research activity organised by the cooperation between the employer and employee. The direct and substantial element is commercial for the production and/or distribution of goods and services calculated to satisfy human wants and wishes on a large scale. The discoveries/inventions are sold to the pharmaceutical concerns to manufacture the medicines to control malaria on a large scale to serve the human wants. Without the systematic activity and cooperation of the employees, this work cannot be carried out. It is done on the basis of trade and business as they are patenting the formula also. In this way the Malaria Research Centre is carrying on activity by cooperation between the employees and employer to provide the community with the use of its discoveries/inventions for giving material service to the human needs and this material service is of a commercial character in which something is brought into distance quite apart from the benefit to particular individuals and it is the production of this something which is prescribed as production of material services. In providing these services the Malaria Research Centre has employed trained Lab Asstt. and scientists to make discoveries/inventions for the productivity of service organised as an industry and commercially valuable.

14. In view of the forgoing discussions, it is held that the Malaria Research Centre is an industry. Issue No. 1 is answered accordingly.

15. Issue No. 2 : The Malaria Research Centre has emphatically argued that the workman Shri Chandra Shekhar Tiwari was employed on temporary basis and his appointment was coterminable with the scheme/project. As per appointment order dated 20-4-87, his services could be terminated as no longer required. The workman services were terminated w.e.f. 23-1-90 vide order annexure A-6, as no longer required. Dr. Neeru Singh has admitted in the statement that the scheme is still continuing. If we go through the statement of claim filed by the Malaria Research Centre it will be clear that the centre has made some allegations against the conduct of Shri Chandra Shekhar Tiwari. It has been stated in para 6 of the statement of claim that the performance of the workman had not been to the satisfaction of the management. He had not been attending his duties often on certain occasion. He was given an intimation of the same and an explanation was also called from him. It has been also alleged that Shri Chandra Shekhar Tiwari had been defaulting in attending his duty from 1988. He did not work devotedly in the scheme. Such a worker was not useful to this scheme and therefore the services were terminated as not required.

16. The aforesaid facts goes to show that the management has made allegations of misconduct against the workmen in their statement of the claim submitted before this Tribunal. They have tried to cover up this facts by taking shelter of condition of appointment order as the services of the workman can be dispensed with as no longer required. It appears that the alleged misconduct as stated in the statement of claim by the Malaria Research Centre had promoted mainly to terminate the services of Shri Chandra Shekhar Tiwari w.e.f. 23-1-90 as the management was not satisfied with his performance. In such a condition the DE should have been conducted by the competent authority of Malaria Research Centre for removing the workman from his service. No such steps were taken by the Centre in terminating the services of the workmen. Such action is in clear disregard of provisions of law and natural justice. Shri Chandra Shekhar Tiwari should have been given the proper opportunity to explain his conduct as alleged in the statement of claim filed by the management.

17. The management has failed to prove that the workman Shri Chandra Shekhar Tiwari was ever punished for his alleged misconduct. Such imputations are nothing but stigma on conduct and character of workman. Without giving any opportunity to explain his conduct no person can be punished in the eye of law. The project is still in continuous and is likely to be continued in future also as the Malaria has not been eradicated. No notice was also served on the workman before terminating his services. In view of all these facts the order of termination passed by the management against the workman is absolutely illegal which cannot be sustained. Issue No. 2 is answered accordingly.

18. Issue No. 3 : In view of my finding given on issue

Nos. 1 & 2, the workman is entitled to reinstatement with back wages and other consequential benefits. This issue is decided accordingly.

19. Issue No. 4 : On the reasons stated above, it is held that the Malaria Research Centre is an industry and the termination order passed by the management against the workman Shri Chandra Shekhar Tiwari on 23-1-90 is illegal and therefore it is quashed. The workman is entitled to reinstatement with full back wages and other benefits. The reference is accordingly answered in favour of the workman and against the management.

20. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. N. RAI, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का. अ. 1879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-2001 को प्राप्त हुआ था।

[सं. एल-42012/120/95-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CPWD and their workman, which was received by the Central Government on 6-7-2001.

[No. L-42012/120/95-IR (DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Monday, the 18th June, 2001

Present : K. KARTHIKEYAN,
PRESIDING OFFICER.

INDUSTRIAL DISPUTE NO. 404/2001
(Tamil Nadu State Industrial Tribunal I.D. No. 71/96)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Shri R. Sadasivam and the Management of C.P.W.D., Madras.]

BETWEEN

R. Sadasivam, : I Party/Workman

AND

The Executive Engineer, : II party/Management
 CPWD, Madras

Apperance :

For the Workman : Shri R. Ganesan &
 V. Gangadharan
 Advocates

For the Management : Shri R. Karunakaran,
 Ad. CGSC

AWARD

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No. L-42012/121/95-IR (DU), dated, 26-08-96 :—

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 71/96. When the matter was pending enquiry in that Tribunal the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal the case has been taken on file as I.D. No. 404/2001 and notices were sent to the counsel on record on either side informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 22-02-2001. On receipt of notice from this Tribunal, counsel on either side present and prosecuted this case further.

2. The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication of this Tribunal is as follows :—

“Whether the Management of CPWD, Madras is justified in retiring Shri R. Sadasivam on 31-5-1992 at the age of 58 years? If not to what relief the employee is entitled to?”

3. The industrial dispute referred to between the parties is briefly as follows :—

The I Party/Workman Shri R. Sadasivam (hereinafter referred to as Petitioner) was appointed as a Mate in the work charged establishment of Central Public Works Department w.e.f. 02-01-1957. Subsequently, he was appointed as Work Assistant in the regular classified establishment of CPWD w.e.f. 13-2-73 against the 50% direct recruitment quota. The Work Assistants are engaged as minor supervisors/non-industrial supervisors to assist Section Officers/Junior Engineers. The Petitioner received a communication dated 10-1-92 that his age of superannuation is 58 years and therefore he would be retiring on 31-5-1992 (AN). His representation dated 26-3-92 has no effect. Therefore he filed O.A. No. 508 of 1992 before the Central Administrative Tribunal claiming that he will be entitled to continue in service till 31-5-94 on reaching sixty years of age. The Central Administrative Tribunal, Madras Bench set aside the communication dated 10-1-92 and the Petitioner was directed to make a detailed representation to the authority and a direction was given to the II Party/Management (hereinafter referred to as Respondent) to consider the representation and pass orders within a prescribed time. The petitioner accordingly made a representation on 14-10-1992. Since no orders was passed, a contempt application was filed. While so, the order was passed by the director General, CPWD New Delhi dated 15-4-95 rejecting the Petitioner's representation. Thereafter, the Petitioner raised this industrial dispute questioning his premature retirement. The Petitioner was engaged in construction and maintenance. The work of the work Assistant is to help the Junior Engineer in his work and the predominant work of the Work Assistant is manual (highly skilled). He was helping the Junior Engineer, who was earlier designated as Overseer in survey, layout, execution road work, building work etc. The Petitioner has to hold the chain, running of chain, making offset holding levelling staff, alignment of base line in the case of survey work. All the work done by the Petitioner as the Work Assistant to the Junior Engineer in the execution of road work and building work are predominantly highly skilled manual work. Hence he has to be classified as Highly Skilled manual. The board of arbitrators to whom the dispute relating to categorization/re-classification of work charged staff and regular classified categories of CPWD was raised has passed an award dt. 31-01-1988 classifying the work assistant as highly skilled Grade-IV. It was upheld by the Delhi High Court. As such the award of the board of arbitrators has become final. The Delhi Bench of Central Administrative Tribunal also held that the age of superannuation of a work assistant is sixty years. The Contention of the management that the category of work assistant is governed by FR 56a and not FR 56b is not correct. The date of birth of the Petitioner is 28-5-1934. He is therefore entitled to continue in service till 31-5-1994 A. N. and his age of superannuation is sixty years. Therefore the management of CPWD is not at all justified in retiring the Petitioner with effect from 31-5-1992. He is therefore

entitled to wages for 2 years from 1-6-1992 to 31-5-1994. Hence the Tribunal may be pleased to pass an award holding that the action of the management of CPWD, Madras in retiring Sh. R. Sadasivam, the Petitioner on 31-5-92 on the ground that his age of superannuation is 58 years is unjustified and the Petitioner is entitled to continue his service till his sixty years of age i.e. 31-5-1994 A.N. and for the consequential benefits.

4. The second party management of CPWD, Madras (hereinafter referred to as the Respondent) has stated in the counter statement that the Petitioner is not entitled to get the relief under the Industrial Dispute Act. The Respondent would further content that consequent upon appointment of the Petitioner as work assistant against 50% direct recruitment quota, he automatically seized to be in the work charge establishment except counting of the past services for pensionary benefits and carry over of leaves. He seized to be a workman within the ambit of FR 56b, when he was appointed as work assistant. As defined in the categorization committee reports, the Petitioner cannot be categorized as technical or industrial worker of highly skilled or semi skilled or unskilled artisans employed within the meaning of FR 56b. Hence, the reckoned age of superannuation of the work assistant is only 58 years. The appointment was borne on the regular classified establishment under Group 'C' category for which the age of retirement fixed according to para 16 of Sec. 9 of Chapter VI of CPWD manual Vol-I and Rule 58 CCS Pension Rules, 1972 is 58 years and not 60 years. The benefit of 60 years allowed in the case of a mason who was promoted as work assistant in the classified category by the Central Administrative Tribunal, Delhi Bench in O.A. No. 399/80 dt. 29-5-91 cannot be cited as a precedent and comparable in this case. Because the applicant in that case was a promotee work assistant, whereas in the present case the Petitioner was appointed as work assistant on direct recruitment quota. The order pronounced by the Central Administrative Tribunal, Madras Bench in O.A. No. 508/92 can be denied to the Petitioner's contention. The Petitioner's retirement on attaining 58 years cannot be held as premature. The Director General of Works, CPWD after perusing the orders passed by the Central Administrative Tribunal, Madras Bench in O.A. No. 508/92 decided that the Petitioner being a minor supervisor by the nature of his duties could not be considered as a workman and therefore it was not to be governed by FR 56b and his age of retirement would be 58 years. The Arbitration Award refers to wherein the work assistant categorized as highly skilled Grade-IV does not refer to the retirement age of work assistant which continues to be 58 years as it is applicable to all Group 'C' employees in CPWD. The position regarding the retirement age has been finally settled by the Central Administrative Tribunal of Gauhati Bench in O.A. No. 160/94 where it has been laid down that the retirement age for work assistant is 58

years. The case of the Petitioner is totally different from the case of Sh. Benne Prasad who was promoted as work assistant from the post of mason in the work charge establishment and transferred to regular classified establishment at the fair end of his service. The Petitioner placed under Group 'C' Class-III category is fully aware that the date of superannuation is 31.5.92 and had all along kept quite, enjoying all the benefits available to him in a Group 'C' post. The Petitioner had also submitted his pension papers and got all the pensionary benefits. Therefore the Tribunal may be pleased to dismiss this petition as devoid of merits.

5. When the matter was taken up finally for enquiry on 31.5.2001 and informed this Court they have no oral or documentary evidence to let in on the respective side. The counsel on either side advanced their arguments.

Point:

6. In the present Industrial Dispute, the I Party Workman/Petitioner Sh. R. Sadasivam disputes that the action of the management of CPWD, Madras in retiring him from service on 31.5.92 fixing his age of superannuation as 58 years. It is admitted that the Petitioner originally appointed as a mate was subsequently appointed as work assistant against 50% direct recruitment quota. It is not disputed that the post of work assistant is a regular classified establishment of CPWD. It is the contention of the Petitioner that he received a communication dt. 10.1.92 stating that the age of superannuation is 58 years and therefore he would be retiring on 31.5.1992 A.N. As per the direction of the Central Administrative Tribunal, Madras Bench while disposing of the O.A. No. 508/92 filed by the Petitioner, he made a representation to the authorities and the Directorate General, CPWD, New Delhi passed an order dt. 15.4.95 rejecting the Petitioner's representation. That order copy has not been filed by the Petitioner in this case. Against that decision of the Directorate General, CPWD, New Delhi, the Petitioner has raised this Industrial Dispute. It is the contention of the Petitioner that the Board of arbitrators had passed an award dt. 31.1.1988 classifying the work assistant as highly skilled Grade-IV and it was upheld by Delhi High Court and the SLP filed by the CPWD was dismissed. As such, the award of the board of arbitrators has become final. Therefore the Petitioner is entitled to continue in service in the category of work assistant till 31.5.94 A.N. as his age of superannuation is 60 years under FR 56b.

7. The Respondent management has opposed his contention has stated in the counter statement that the Petitioner consequent upon his appointment as work assistant against 50% direct recruitment quota automatically seized to be in the work charge establishment of CPWD and he is the workman provided appointment on the regular classified establishment under Groups 'C' category. The Petitioner has not denied about his

[Page No. 355]
appointment as work assistant against 50% direct recruitment quota. That being the case, his appointment can only be a regular classified establishment in the Group 'C' category for which the age of retirement fixed under Section 9 of Chapter VI of CPWD manual Vol.-I and Rule 58 CCS Pension Rules, 1972 is 58 years and not 60 years.

8. The Petitioner is relying upon the decision of the Central Administrative Tribunal, Delhi Bench in O.A. No. 399/80 dt. 29.5.91 wherein it was held that the work assistant even after transfer to the regular establishment virtually continue to remain part of the work charge establishment and the age of retirement he would be entitled is under FR 56b as 60. In that case, the Petitioner Sh. Benne Prasad joined CPWD as a mason in the year 1947 and has promoted as work assistant on 29.5.85. As his date of birth was 1.7.1928, he would attain the age of superannuation on 30.6.1986 based on FR 56a. His contention that has a workman in an Industrial or work charge establishment is governed by FR 56b and his superannuation is 60. That was accepted by the Delhi Bench of Central Administrative Tribunal while passing orders in his application O.A. No. 399/86. The learned counsel for the Respondent would content that the cited case decided by the Delhi Bench of the Central Administrative Tribunal is not applicable to the facts of this case. Because the present Petitioner Sh. R. Sadasivam was appointed as work assistant against 50% direct recruitment quota and he is not a promotive from the post of the mason to work assistant as the Petitioner Sh. Benne Prasad in the cited case. Since the Petitioner has been appointed as a direct recruit, he automatically seized to be in the work charge establishment. Under such circumstances he would come under the regular classified establishment under Group 'C' category for which the age of retirement is 58 years as fixed under Section 9 of Chapter VI of CPWD Manual Volume-I under Rule 58 CCS Pension Rules, 1972. This is not disputed by the Petitioner. The learned counsel for the Respondent is relied upon the decision of the Central Administrative Tribunal, Guwahati Bench in O.A. No. 160/94 dt. 12-6-96, a later decision on this point by an equal forum after the decision dt. 29-5-91 in O.A. No. 399/86 by CAT, New Delhi. In that Guwahati Bench decision it is held that the retirement age of work assistant is 58 years as is applicable to all Group 'C' employees in CPWD. The Supreme Court in a case reported as 1995 (2) SLJ (SC) page 199, State of Orissa and Others Vs. Adait Charan Mohanty has held in the age of retirement is 58 years. Taking into consideration of Guwahati Bench, Central Administrative Tribunal decision in O.A. No. 160/94. It is further contended by the learned counsel for the Respondent that the Petitioner placed under the Group 'C' Class III category had all along kept quite enjoying all the benefits available to him in the Group 'C' post and had submitted his pension papers and got all the pensionary benefits. This has not been disputed by the Petitioner Workman. Under such

circumstances, I find no reason to disagree with the argument advanced by the learned counsel for the Respondent. On the basis of the material available in this case, the contention of the Respondent that the Petitioner is not entitled to relief of retaining in service upto his age of 60 is acceptable. Hence it is concluded that the action of the management of CPWD, Madras is justified in retiring Sh. R. Sadasivam, the Petitioner Workman on 31-5-92 at the age of 58 years. Hence the concerned employee is not entitled to any relief.

In the result an award is passed holding that the action of the management of CPWD, Madras is justified in retiring Sh. R. Sadasivam on 31.5.92 at the age of 58 years and the concerned workman is not entitled to any relief. No cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th June, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined

On either side : None

Documents Marked

On either side : Nil

नई दिल्ली, 6 जुलाई, 2001

का०आ० 1880 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सिल्क बोर्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-2001 को प्राप्त हुआ था।

[सं. एल-42011/5/85-डी.II(बी)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Silk Board and their workman, which was received by the Central Government on 6-7-2001.

[No. L-42011/5/85-D.II(B)]

KULDIP RAI VERMA, Desk Officer

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT**

"Shram Sadan"

**G. G. Palya, Tumkur Road,
Yeshwantpur, Bangalore-560022**

DATED : 20th JUNE, 2001

**PRESENT : HON'BLE V. N. KULKARNI
PRESIDING OFFICER**

C. R. No. 45/87

I Party

1. A. M. Durairaju,
S/o Late Marathamuthy
Residing at Thalli Village and Post,
Dankanikote Taluk,
Dharampuri district,
Tamilnadu—635118.
2. Madhu Rao,
S/o Krishnoji Rao,
r/o Gadipalyan,
Hosur Cattle Farm Post,
Hosur Taluk,
Dharamapure Post.

II Party

1. The Director,
Central Silk Board,
United Mansions,
2nd Floor 39, M. G. Road,
BANGALORE—560001.
2. Central Silk Board,
Employees Union,
by its President, 17/1,
13th Cross Road,
Mahalakshnipuram,
(Bhovipalya),
BANGALORE—86.
3. B. N. Vijakumar,
S/o K. M. Narasimhaiah,
C/o N. 17/13, 13th Cross road,
Mahalakshnipuram,
Bhovipalya,
BANGALORE—86.

Appearances

**I Party : K. V. Sathyanarayana
Advocate**

**II Party : N.S.Narasimha Swamy,
Advocate**

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-42011/5/85-D.II dated 24.03.1986 for adjudication on the following schedule.

SCHEDULE

"Whether the management of Central Silk Board Bangalore is justified in not regularising the services of 66 (list enclosed) Field-Cum-Laboratory Assistants who have been working for more than 4 to 7 years as temporary employees? If not, to what relief the workmen are entitled?"

2. I party workmen are working with the II party. The grievance of the I party union workmen is that the services of the 66 workmen are not regularised who are field-cum-laboratory assistants, and therefore the dispute is raised.

3. Workmen are represented by Union. The case of the I party Union workmen is as follows.

4. Names of the 66 workmen is given in para 3 of the statement. It is the further case of the workmen that they are initially appointed as casual workers on daily wages. The activities of the management is stated in para 5 of the statement. The workmen submitted application for the post of Field-cum-Laboratory Assistants and they were appointed to the said post. They are in continuous appointment from the date of their appointment in 1977 onwards. They have completed more than 240 days of continuous service. The workmen are given benefits of annual increments, etc. A lengthy statement is filed and it is said that Juniors to these workmen are promoted and their names are given in para 10 and they are 148 workmen. The said 148 workmen were appointed subsequent to 20th March, 1978 and 66 workmen are appointed as Field-cum-Laboratory Assistants from 1977 onwards and the said 148 workmen are Juniors to these workmen. Many representations were made for promotion and other benefits. It is the further case of the I party that some of the workmen were directly appointed as stated in para 12 of the Claim Statement. As per the contentions in para 13 some of the Workmen are appointed on adhoc basis and they are placed according to seniority list and their names are given in para 13 of the Claim Statement. The action of the management is not proper, inspite of the facts that all the employees are board employees distinct seniority rules are maintained. But these workmen are not regularised from the date of their adhoc appointment. These workmen have prayed to regularise their services, as per the prayer in para 20 of the Statement.

5. It is seen from the records that in the year 1987 that this tribunal passed a consent Award.

6. According to consent award the management was directed to regularise workmen on ad hoc basis and also there was direction to regularise irregular appointments of the eligible Field-Cum-Laboratory Assistants w.e.f. 9-9-87 and there was direction that the management should given protection of pay to the eligible Field-cum-Laboratory Assistants as on 9-9-87 without stopping out and seniority of eligibility from the date of regularisation i.e., 9-9-87 is to be paid. It is the further case of the I party workmen that the regularisation will flow to the eligible Field-cum-Laboratory Assistants from the date of regularisation i.e. 9-9-87. This contention was taken by all the 66 workmen.

7. It appears that only 2 workmen A. Madhu Rao and Dorai Raju are not satisfied with the consent award saying that they are not parties to the said award. These two workmen have contended that they may be regularised from the date of adhoc appointment.

8. It is seen from the records that they also went to the High Court. These two workmen are contending that they may be regularised from the year 1980.

9. It is clear from the records that these two workmen are also appointed on adhoc basis and they are working as Senior Field Laboratory Assistants. These two workmen have not filed any document to prove that they are entitled to regularise from the date of adhoc appointment except Ex W-1 which is an Office Memorandum and according to this Senior Field-cum-Laboratory Assistant one M. L. Mahadeva was regularised from 16-7-78 who was appointed on adhoc basis and is promoted and regularised from 23-5-78. We do not have any record to know the service conditions of said M. L. Mahadeva. The promotion is also given to Mahadeva only on adhoc basis and therefore this document will not help anything to these two workmen. It is clear that consent award is passed. It is also clear from the records that appointments of these two workmen were also on adhoc basis. Any how the management has agreed to regularise adhoc appointment from 9-9-87 and in my opinion this will serve the purpose of regularisation.

10. Absolutely there is no material before us to say that these two workmen are entitled for regularisation from the year 1980 and there is no merit in this reference.

11. Accordingly, I proceed to pass the following order.

ORDER

Reference is rejected

(Dictated to the L D C, transcribed by him, corrected and signed by me on 20th June, 2001)

V.N.KULKARNI, Presiding Officer

नई दिल्ली, 6 जुलाई, 2001

का०आ० 1881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल आर्डनेन्स डिपो के प्रबंधन के संबन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-2001 को प्राप्त हुआ था।

[सं. एल-14011/7/87-डी.II(बी)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 6th July, 2001

S.O. 1881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Ordnance Depot and their workman, which was received by the Central Government on 6-7-2001.

[No. L-14011/7/87-D.II(B)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

Case No. CGIT/LC/R/30/89

PRESIDING OFFICER : SHRI K. M. RAI

Shri D. P. Vaidya &

Shri J. P. Agarwal

C/o Shri J. K. Bhattacharya
Secretary Depot Kamgar Union,
COD, Jabalpur.

...Applicant

VERSUS

The Commandant,
COD, Jabalpur

...Non- Applicant

AWARD

Passed on this 30th day of January, 2001

The Govt. of India, Ministry of Labour vide Order No. L-14011/7/87-D-2(B) dated 23-1-89 has referred the following dispute for adjudication by this tribunal—

'Whether the action of the Management of Central Ordnance Depot, Jabalpur in imposing

punishment on Shri D. P. Vaidya and Shri J. P. Agarwal vide their order dated 29-1-87 and 28-11-86 respectively and making recovery of LTC advance granted to them by the management is justified?

2. The case for the workmen is that during the year 1983-84, the management of COD Jabalpur had started recovery of LTC Advance from their wages without conducting any enquiry and assigning any reasons in respect thereof. Their claim for LTC was rejected by the management without any reason. They had undertaken their legitimate journey and, therefore, they had submitted the bill of final payment to the management. The management's order dated 14-4-84 was challenged by the workmen before the Labour Court, Jabalpur under the Payment of Wages Act. During the pendency of the case, the management issued chargesheet to the workman and started Disciplinary Proceedings against them. On the workmen's application, the labour court permitted the management to continue with the enquiry proceedings but they were directed not to disclose the decision taken into the enquiry. The management was further directed that if the workman could not succeed in their case then the management would be free to take action as per the decision in the Departmental Enquiry Proceedings. Ultimately the Labour Court held the LTC claim of the workmen as genuine and accordingly the management's order dated 14-4-84 for the recovery of advance from the workmen's wages was declared null and void vide its order dated 17-12-85.

3. The workmen further allege that after the judgement of Labour Court the management did not pay the LTC claim and the deducted amount from their wages to them. The workman filed an application before the Labour Court, Jabalpur to prosecute the management for not complying with the order passed on 17-12-85. To escape from prosecution the management immediately deposited the lumpsum amount as directed by the court. After the deposit of the amount, the management saved themselves from prosecution. In pursuance of the order of the Labour Court dated 17-12-85, the management cannot take any disciplinary action against the workman in respect to the recovery of LTC amount from their wages as the said order has become final. The punishment order passed by the management in this respect is absolutely illegal.

4. The workman further contend that the Departmental Enquiry conducted by the management is in contravention of the order passed by the Labour Court dated 17-12-85. The management exceeded its jurisdiction in by passing the order of the said court. The order of the Disciplinary Authority in punishing the workmen is nothing but the colourable exercise of power. During the enquiry proceeding, the Enquiry Officer exonerated the workman Shri D. P. Vaidya of the charges. The action of the

management is full of malafide. The workmen had not been given reasonable opportunity to defend their case. The workman Shri J.P. Agarwal was not given opportunity to defend his case and the order of punishment was passed behind his back in utter disregard of the principles of natural justice. The order of Disciplinary Authority is absolutely perverse. The enquiry conducted against the workman is not just and proper. In view of all these facts, the punishment order passed by the management in recovering the LTC Advance from their wages and reducing their salary deserve to be set aside. They are entitled to the payment of all the amount due to them.

5. The management's case is that the workmen applied for LTC. Shri D. P. Vaidya drew Rs. 4040 as LTC Advance on 15-5-82 for himself and members of his family to visit Kanyakumari and preferred fraudulent LTC adjustment claim for Rs. 5500 on 20-6-82. The cash receipt from Sangam Travel, Ranjhi was filed by him. It was revealed on enquiry that no Sangam Travel Agency existed in Jabalpur town. For this fraudulent act, the Departmental Enquiry was initiated against the workman Shri D. P. Vaidya. Similarly other workman Shri J. P. Agarwal also applied for and drew Rs. 840 as LTC Advance on 15-5-82. He had also applied for LTC Advance for himself and 5 members of his family for visiting Kanyakumari and back by IInd class rail accommodation. On 19th Jan. 82 he preferred a claim of Rs. 1800. He claimed to have travelled by motor vehicle No. NLK-7641 registered in the State of Nagaland and owned by Sardar Surjeet Singh. He also filed the receipt from Sangam Travels, Ranjhi which was found to be fraudulent as no such travel agency existed at Jabalpur. For this fraudulent act, the Departmental Enquiry was also intimated against the said workman.

6. The management further alleges that during the enquiry, it was found that the workman had never undertaken any journey as claimed by them. During the Departmental Enquiry, the workman were found guilty for the misconduct of committing fraud with the management and, therefore, minor punishments of reduction of pay for 2 stages for a period of 2 years was imposed and the amount obtained fraudulently was ordered to be recovered from them. The Departmental Enquiry was conducted properly and sufficient opportunity was given to the workmen to defend their case. The punishment awarded to the workmen is perfectly legal. The authority under Payment of Wages Act has no jurisdiction to direct payment of LTC Advance to the workmen. The order passed by the Labour Court in this connection is without jurisdiction and, therefore, it has no force of law. In view of all these facts, the workmen are not entitled to any relief as claimed by them.

7. Following issues have been framed in this case and my findings thereon are noted as under :—

1. Whether the Departmental/Domestic enquiry is proper and legal?
2. Whether the management is entitled to lead evidence before this tribunal?
3. Whether the charges of misconduct are proved on the facts of the case?
4. Whether the punishment awarded is proper and legal?
5. Relief and costs?
8. Issues No. 1 & 2 :

From the order sheet dated 4-1-96, it becomes amply clear that the workmen had not disputed the legality of the Departmental Enquiry conducted against them. They have simply challenged the finding of Enquiry Officer and the quantum of punishment on the basis of perversity. In view of this fact, it is held that the enquiry was just and proper and, therefore, the management is not required to led any evidence to prove the alleged misconduct against the workmen. Issues No. 1 & 2 are decided accordingly.

9. Issue No. 3 :

It is an admitted fact that on 15th May, 1982 the workmen received advance from the management for LTC. They claimed to have travelled from Jabalpur to Kanyakumari by bus of Sangam Travel Agency, Jabalpur. After return from Kanyakumari they submitted their claim which was cleared by the management. Subsequently the management alleged to have found the claim of the workmen false as they had not travelled from Jabalpur to Kanyakumari by bus of Sangam Travel Agency. According to the management no such travel agency ever existed at Jabalpur. Thereafter the management started recovering the LTC Advance from the salary of the workmen. Being aggrieved by this order, the workmen filed an application before the competent authority under the Payment of Wages Act (Labour Court) Jabalpur for passing appropriate order and restrained the management from recovering the said amount. The workmens' application were registered as case No. 14/PWA/84 and 15/PWA/84 by the said court. Both the parties were given ample opportunity to led evidence in support of their case. They led evidence to prove their claim before the said court. Ultimately on 17-12-85, the Labour Court, Jabalpur held the order of recovery of LTC amount from the workmen as illegal. It was also further held that the workman had undertaken the journey from Jabalpur to Kanyakumari by road as claimed by them. It was also further held that the Sangam Travel Agency was registered body and, therefore, the claim of the management was found to be wrong as no such travel agency ever existed at Jabalpur. This order

Annexure A was never challenged before the proper forum by the management and, therefore, it attained the status of finality as held by the High Court of MP in WP No. 3928/87 on 17-11-97 the copy of which has been filed in this case. The High Court too has upheld order of the Labour Court passed on 17-12-85. In such a circumstance, the validity of order of Labour Court cannot be assailed at this stage in the present case.

10. The management, in utter disregard of the order passed by the Competent Authority (Labour Court), Jabalpur on 17-12-85 in case No. 14/84 and 15/84 conducted the Departmental Enquiry against the workman regarding the alleged misconduct of fraudulent claim of LTC. The Labour Court has specifically held the claim of the workman perfectly legal and proper and, therefore, the management was not justified in conducting the DE and holding the workman guilty of fraudulent claim of LTC. The order passed by the Competent Authority had attained finality and, therefore, its correctness cannot be challenged by the management by conducting the Departmental Enquiry and giving the finding contrary to it. It is against the judicial ethics. In view of this fact, the punishment awarded to the workman vide order dated 28-11-86 and 29-1-87 is absolutely illegal which cannot be sustained in the eye of law. The charges of misconduct remains not proved against the workman as held by the Competent authority under the Payment of Wages Act on 17-12-85. Issue No. 3 is answered accordingly.

11. Issue No. 4 :

In view of my finding given on issue No. 3, the award of punishment given by the management against the workman on 28-11-86 and 29-1-87 making recovery of LTC Advance and thereby reducing their pay by 2 stages for a period of 2 years is held illegal. This order deserves to be set aside. Issue No. 4 is answered accordingly.

12. Issue No. 5 :

On the reasons stated above, the award of punishment dated 28-12-86 and 29-1-87 given by the management against the workmen making recovery of LTC Advance and reducing their pay by two stages is hereby set aside. The workmen should be given all the deducted amount as well as the reduced salary be restored to its original stage within the period of 3 months from the date of award. they should also be given all consequential benefits attaching to their post. In this way, the reference is answered in the favour of the workmen and against the management.

13. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

